

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1974  
VOLUME 5

Revised Civil Statutes (Articles 5562 to End)



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# West's Texas Statutes and Codes

Volume 5

**SUPERSEDED**

REVISED CIVIL STATUTES

Articles 5562 to End

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TOPICAL INDEX

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## PREFACE

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These volumes of West's Texas Statutes and Codes include, in compact and convenient form, the text of all the general and permanent laws of the State of Texas enacted through the Regular Session and First Called Session of the 63rd Legislature, and the Texas Constitution, as amended through November 6, 1973.

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

### Scope of Volumes

Volume 1 contains the Constitution of the State of Texas; the Business and Commerce Code; the Education Code; the Family Code; the Penal Code; Penal Auxiliary Laws (Liquor Control Act; Game, Fish and Oysters); the Code of Criminal Procedure; and the Water Code. The Business and Commerce, Education, Family, Penal and Water Codes are units of the Texas Legislative Council's on-going statutory revision program, authorized by Civil Statutes, Art. 5429b-1.

Volume 2 contains the Business Corporation Act; Title 32, Corporations, of the Civil Statutes; the Election Code; the Insurance Code; Title 78, Insurance, of the Civil Statutes; the Probate Code; and Title 122, Taxation, and Title 122A, Taxation-General, of the Civil Statutes.

Volumes 3 to 5 contain the balance of the text of the Civil Statutes.

### Tables

Disposition Tables are provided following each Code and throughout the Civil Statutes, providing a means of tracing repealed subject matter to parallel provisions.

Special laws pertaining to education and water, which were neither repealed by, nor incorporated into, the Education and Water Codes, are tabulated following the respective Codes.

Additionally, Disposition Table 2 of the Penal Code shows the new official citations or classifications of unrepealed articles of the Texas Penal Code of 1925.

## PREFACE

### Indexes

A separate detailed descriptive word Index follows the Constitution, each Code and the Penal Auxiliary Laws to facilitate the search for specific provisions found therein. Laws in the Civil Statutes may be located by means of the Topical Index at the end of Volume 5.

THE PUBLISHER

November, 1974

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## CITE THIS BOOK

Thus: West's Texas Civil Statutes, Art. —

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## TITLE 93

### MARKETS AND WAREHOUSES

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#### CHAPTER ONE. COMMISSIONER OF AGRICULTURE

Article
5562. Appointing Board.
5563. The Commissioner.
5564. Employees and Expenses.
5565. Repealed.
5566. Statistics.
5567. To Establish Agencies.

##### Art. 5562. Appointing Board

The Governor, the Commissioner of Agriculture and the Banking Commissioner shall constitute a board<sup>1</sup> which with the consent of the Senate, shall appoint biennially a suitable person as Commissioner of Markets and Warehouses<sup>2</sup> to fill such office for a term of two years. Said Commissioner may for cause be removed at any time by the board.

[Acts 1925, S.B. 84.]

<sup>1</sup> Board abolished. See Acts 1925, 39th Leg., p. 35, ch. 13, § 2, following art. 5611.

<sup>2</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, p. 35, 39th Leg., ch. 13, following art. 5611.

##### Art. 5563. The Commissioner

The word "Commissioner," as used in this title, shall mean the Commissioner of Markets and Warehouses<sup>1</sup> of the State of Texas. He shall be furnished proper quarters to be selected by the Governor, to meet the requirements of his department. He shall give bond in the sum of ten thousand dollars payable to the Governor and conditioned for the faithful performance of his duties.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

##### Art. 5564. Employees and Expenses

The Commissioner<sup>1</sup> with the consent of said Board may employ a chief clerk, and such other help as may be necessary. Such help, other

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than the chief clerk, shall receive such salaries as may be fixed by the Commissioner<sup>1</sup> and approved by the Board. The Commissioner<sup>1</sup> and such employees when traveling on official business shall receive actual necessary expenses. All expenditures, including expenses of administering this department shall be paid by a warrant drawn by the Comptroller on the State Treasurer, on accounts approved by the Commissioner<sup>1</sup> or on his authority.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

Art. 5565. Repealed by Acts 1933, 43rd Leg., p. 731, ch. 218

##### Art. 5566. Statistics

The Commissioner<sup>1</sup> shall collect, from every source available, information concerning stocks on hand and the probable yield of farm and ranch products, and disseminate the same.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

##### Art. 5567. To Establish Agencies

The Commissioner<sup>1</sup> shall establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### CHAPTER TWO. WAREHOUSES AND WAREHOUSEMEN

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5575, 5576. Repealed.
5577. Exceptions.
5577a. Public Grain Warehouses.
5577b. Grain Warehouse Act.

##### Art. 5568. "Public Warehousemen" and "Warehouse"

Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice,

or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen.

A warehouse, within the meaning of this law shall be a house, building, or room in which any of the above mentioned commodities are stored and are protected from damage thereto by action of the elements.

[Acts 1925, S.B. 84.]

#### Art. 5569. Certificate and Bond

The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse and shall be revocable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, which bond shall be filed and preserved in the office of such county clerk.

[Acts 1925, S.B. 84.]

#### Art. 5570. Receipts and Duplicates

On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear the date of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored. Where such receipt is for cotton it shall state the class and weight, and the date

on which it was originally received in warehouse, and that it is deliverable upon return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue. A correct record of such receipts shall be kept in a well bound book, which shall be at all reasonable hours, open to an examination by any interested person. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate." No such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration.

[Acts 1925, S.B. 84.]

#### Art. 5570a. Receipts Containing Statement of Cotton Grade and Staple; Penalty

Sec. 1. From and after the passage of this Act, it shall be the duty of every owner, proprietor, lessee, and manager of any public warehouse, whether an individual, firm or corporation to, upon delivery to him of any cotton, and upon the request of the owner of said cotton said warehouseman shall issue a public warehouse receipt therefor which receipt shall contain in addition to the information now required by Article 5570 of the Statutes of this State, a statement of the grade and staple of the cotton represented by the receipt, said grade and staple to have been determined by a public cotton classer, licensed as required by law, for which statement of grade and staple the warehouseman shall not collect any charge in excess of twenty-five (25¢) cents per bale; provided, however, that in event no public cotton classer, licensed as required by law is available at any public warehouse, the warehouseman shall be authorized to issue a temporary receipt, which receipt need not contain the aforementioned statement of class and staple and which shall have the words "temporary receipt" plainly stamped across the face thereof; and which receipt shall be exchangeable at any time after five (5) days after its date of issuance for a permanent warehouse receipt, containing all of the information afore required.

Sec. 2. Any warehouseman who shall fail or neglect to comply with any of the provisions of this Act shall be deemed guilty of the violation of law contemplated in Article 5569 of the Revised Statutes of this State, and upon proof of such failure or neglect shall be deemed liable to revocation of his certificate by any

Court of competent jurisdiction as provided in the aforementioned Article.

[Acts 1931, 42nd Leg., 2nd C.S., p. 45, ch. 25.]

#### Art. 5571. Cotton Under Lien

No person, firm, or corporation which subsequently buys, sells, or deals in any way with negotiable warehouse receipts issued by any public warehouseman to evidence cotton stored in a public warehouse or which subsequently buys, sells, or deals in any way with such cotton, shall be liable for conversion of said cotton because of the existence of any lien or encumbrance on said cotton in the absence of actual knowledge of such lien or encumbrance at the time of the claimed conversion.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 2334, ch. 789, § 1, eff. Sept. 1, 1969.]

#### Art. 5572. Exchange of Receipt

If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said negotiable receipt thereupon shall be canceled, and the word "canceled" plainly marked in ink across the face thereof.

[Acts 1925, S.B. 84.]

#### Art. 5573. Delivery Must Precede Receipt

No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt.

[Acts 1925, S.B. 84.]

#### Art. 5574. Delivery From Warehouse

On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and canceled except in case of lost receipts. In default of strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall also be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly

marked in ink across its face with the words<sup>1</sup> "Canceled" with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation.

[Acts 1925, S.B. 84.]

<sup>1</sup> Should probably be "word."

#### Arts. 5575, 5576, Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5575, 5576 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, §§ 7.104, 7.204, 7.501 et seq.

#### Art. 5577. Exceptions

Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws. Such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt."

[Acts 1925, S.B. 84.]

#### Art. 5577a. Public Grain Warehouses

##### Definitions

Sec. 1. (a) The term "person," as used in this Act, shall be construed to mean any individual, corporation, partnership, firm, company or association.

(b) The term "public grain warehouse," as used in this Act, shall be construed to mean any place where non-perishable grains and/or field seeds are received for storage for others in bulk and/or for handling for re-storage.

(c) The term "warehouseman," as used in this Act, shall be construed to mean any person operating a public grain warehouse as herein defined.

(d) The term "Commissioner," when used in this Act, shall mean the Commissioner of Agriculture of the State of Texas.

##### Enforcement; Personnel and Equipment

Sec. 2. The Commissioner shall carry out and enforce the provisions of this Act and is hereby empowered to appoint and fix the duties and compensation of inspectors and such other personnel and provide such equipment as may be necessary to assist him in enforcing the provisions hereof.

## Licenses and Bonds

Sec. 3. It shall be unlawful for any person to operate a public grain warehouse unless he shall have obtained and holds a license therefor issued by the Commissioner. Each application for such license shall be on a form prescribed by the Commissioner of Agriculture, which shall charge and collect a fee of Ten (\$10.00) Dollars for each such license and deposit the same in the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund. No such license shall be issued until the applicant therefor has filed with the Commissioner a corporate surety bond, in an amount not less than Five Thousand (\$5,000.00) Dollars, and not more than Fifty Thousand (\$50,000.00) Dollars on a form prescribed by the Commissioner, conditioned that the applicant will fulfill all of his obligations as a warehouseman. Subject to the limitations herein provided, such bond shall be payable to the State of Texas and shall be in such amount as the Commissioner determines will be sufficient to afford adequate protection to the public, and the amount thereof shall be changed from time to time, whenever the State Commissioner finds that the interests of the public require the same. Anyone injured by the violation of the terms of the bond may recover damages to the amount of the bond and suit therefor may be instituted by such injured person; provided, however, that the aggregate liability of the surety to all such injured persons for all such damages shall, in no event, exceed the amount of such bond. Each license issued under the provisions of this section shall expire one (1) year after its issuance, but may be suspended or revoked sooner by the Commissioner, after notice by registered mail and an opportunity to be heard has been given, for a failure to maintain the bond required herein or adequate insurance on all grains and field seeds received in store, or for a violation of any of the provisions of this Act or any rule or regulation of the Commissioner adopted pursuant to this Act. Provided, that upon evidence of just and good cause such license may be temporarily suspended without a hearing, for a period not to exceed thirty (30) days.

Where a warehouseman operates more than one (1) warehouse unit located in close proximity, and on the same general site as the one (1) unit for which he has been licensed, he shall be entitled to a permit or permits for the operation of such additional units, upon application for such permits made to the Commissioner on forms to be prescribed by him, and the payment of an annual permit fee in the amount of Ten (\$10.00) Dollars for each such permit, and such permit shall run concurrently with the license of this principal unit and one (1) bond shall cover all the units as a whole.

## Bond After Termination of License

Sec. 4. The Commissioner may require a bond from any warehouseman upon suspension, revocation or expiration of his license, for an

amount to be fixed by the Commissioner, to afford adequate protection to the holders of warehouse receipts issued by such warehouseman so long as any receipts remain outstanding or uncanceled.

## Reports; Inspections; Fees

Sec. 5. Each warehouseman shall, when requested by the Commissioner of Agriculture, make a report to the Commissioner concerning the condition, conduct, operation and business of each warehouse he operates and the grains and field seeds stored therein, and shall permit any representative or agent of the Commissioner to enter and inspect each such warehouse and its contents and the records thereof, and shall render any assistance necessary in checking any condition or books in connection therewith. The Commissioner shall charge and collect, for not to exceed one (1) annual examination and/or inspection of each warehouse unless an additional examination and/or inspection is made at the request of the warehouseman, an inspection fee at the rate of One (\$1.00) Dollar for each ten thousand (10,000) bushels of the rated grain storage capacity or fraction thereof of the warehouse inspected, but in no case shall such inspection fee be less than Fifteen (\$15.00) Dollars. The Commissioner may make as many inspections as he deems necessary providing that no more than one (1) inspection fee per year is charged. All such fees collected shall be deposited in an account to be known as the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund.

## Insurance of Stored Grains and Seeds

Sec. 6. Every person licensed under the provisions of this Act shall insure, and shall at all times keep insured, in his own name, all of the grains and seeds in store for the full market value thereof, against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado, and, in the event of any other damage to such grains and field seeds, or to the warehouse or warehouses, whether or not such loss was insured against, he shall immediately notify the Commissioner and shall at his own expense promptly take steps necessary to collect the moneys which may be due as indemnity for such loss or damage. For the purpose of this Section, "full market value" shall mean the value required by law to be used by underwriters in paying for losses of the grains and field seeds insured for their actual cash value. In the event the warehouseman insures against hazards not specified herein, such insurance shall inure to the benefit of the holders of the warehouse receipts.

## Scale Tickets

Sec. 7. Each warehouseman shall, upon weighing grains and field seeds, issue to the person from whom the same are received a scale ticket in a form or forms approved by the Commissioner. Such scale ticket shall be non-

negotiable, but may singly or with others be exchanged for a negotiable warehouse receipt.

Warehouse Receipts; Form

Sec. 8. Warehouse receipts shall be in a form prescribed and designed by the Commissioner, in conformity with the Texas Uniform Warehouse Receipt Act.<sup>1</sup>

<sup>1</sup> Article 5612 et seq. (repealed).

Issuance of Warehouse Receipts; Numbering

Sec. 9. Upon application of the owner or consignee of grains and field seeds stored in a public grain warehouse, the warehouseman shall issue to the person entitled thereto a warehouse receipt therefor. No two (2) warehouse receipts bearing the same number shall be issued for the same public grain warehouse during any one (1) calendar year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked upon its face "Duplicate".

Issuance Only on Actual Delivery; Multiple Receipts for Same Lot; Division and Consolidation

Sec. 10. No warehouse receipt shall be issued except upon actual delivery of grains and/or field seeds into store in the public grain warehouse from which it purports to be issued, and which are to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grains or field seeds than is contained in the lot stated to have been received, nor shall more than one (1) receipt be issued for the same lot of grains or field seeds except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grains or field seeds represented by the receipt is delivered out of store and the remainder is left, new receipt may be issued for the remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is the balance of the receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if the grains or field seeds it calls for had all been delivered. In case it be desirable to divide one (1) receipt into two (2) or more, or in case it be desirable to consolidate two (2) or more receipts into one (1), and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grains or field seeds had been delivered from store, and the new receipts shall state on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new receipts issued explaining the change; but no consolidation of receipts of dates differing more than ten (10) days shall be permitted, and all new receipts issued for old ones cancelled as herein provided shall bear the same dates as those originally issued as near as may be.

Lost or Destroyed Receipts

Sec. 11. In case a warehouse receipt is lost or destroyed, a duplicate so marked shall be issued therefor in the same manner as the original receipt upon affidavit of the owner of the original receipt that such receipt has been lost or destroyed, and the giving to the warehouseman of an acceptable bond with approved security in an amount equal to double the value, at the time the bond is given, of the grains or field seeds represented by said lost or destroyed receipt, which bond shall indemnify against loss or damage sustained by reason of the issuance of such duplicate receipt, and any cost of litigation incident thereto.

Equipment and Records

Sec. 12. Each warehouseman shall provide sufficient equipment for weighing and maintaining quality and keeping records of all grains and field seeds stored.

Liability for Loss or Injury

Sec. 13. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

Issuance of False or Fraudulent Receipts; Removal of Grain or Seed Without Return of Receipt

Sec. 14. Any warehouseman, or employee or manager of a public grain warehouse, who shall be guilty of issuing any warehouse receipt for any grains or field seeds that are not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt that is in any respect fraudulent in its character, either as to its date or as to the quantity, quality or inspected grade of such grains or field seeds or who shall remove any grains or field seeds from store (except to preserve the same from fire or other damage) without the return and cancellation of any and all outstanding receipts that may have been issued to represent such grains or field seeds, shall, when convicted thereof, be guilty of a felony, and shall be punished by a fine of not more than Five Thousand (\$5,000) Dollars or imprisonment in the State penitentiary for not more than five (5) years, or by both such fine and imprisonment.

Issuance of Receipt Without Knowledge; Delivery of Grain or Seeds Without Surrender of Receipt; Failure to Cancel Receipt

Sec. 15. Any warehouseman, or the manager or other employee of a public grain warehouse, who fraudulently issues or aids in issuing a warehouse receipt for any grains or field seeds, without knowing that the same have actually been placed in a public grain warehouse, or who shall deliver any grains or field seeds from a public grain warehouse without the sur-

render and cancellation of the receipt therefor, or who fails to mark his receipt "cancelled" on the delivery of such grains or field seeds, shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than Five Thousand (\$5,000) Dollars or by imprisonment in the State penitentiary for a term of not more than five (5) years, or by both such fine and imprisonment.

**Offenses Respecting License; False or Fraudulent Receipts**

Sec. 16. No public grain warehouse shall be designated as being licensed or operated under the provisions of this Act, and no name or description conveying the impression that it is so licensed or operated shall be used unless such public grain warehouse is so licensed and operated. Any person who shall so misrepresent, or who shall forge, alter, counterfeit, simulate, or falsely represent the license required by this Act, or who shall issue or utter, or aid or assist in uttering, issuing or uttering, or attempt to issue or utter, a false or fraudulent receipt for any grains or field seeds, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than Five Thousand (\$5,000.00) Dollars, or by imprisonment in the State penitentiary for a term of not more than five (5) years, or by both such fine and imprisonment.

**False Statements With Intent to Defraud; Liability to Lienholder or Mortgagee**

Sec. 17. Any person who shall, in order to sell to a public grain warehouseman any grains and/or field seeds upon which a lien or a mortgage exists, make any false statement of a material fact, with intent to defraud, and/or any person who shall in order to procure any negotiable warehouse receipt, make any false statement of a material fact, with intent to defraud, shall be guilty of a felony and shall be punished by a fine of not more than Five Thousand (\$5,000.00) Dollars, or by imprisonment in the State penitentiary for a period of not more than two (2) years, or by both such fine and imprisonment. Provided, that no warehouseman shall be liable to any lienholder or mortgagee for any grains and/or field seeds or liens and/or incumbrances thereon unless at the time of sale the nature and amount of same is clearly set out in a written declaration signed by the person selling such grains and/or field seeds, and it is hereby made the duty of the warehouseman to secure such written declaration before final settlement is made.

**Rules and Regulations**

Sec. 18. The State Commissioner of Agriculture shall make such rules and regulations as he deems necessary to carry out the provisions of this Act.

**Application of Act; Exceptions**

Sec. 19. The provisions of this Act shall not apply to persons operating public grain warehouses under the United States Warehouse Act, as amended, and operating in con-

nection with the rules and regulations made in pursuance thereof or thereunder, and shall not apply to an individual producer-owner who does not receive from other producers grains and/or field seeds for storage and/or handling for re-storage.

**Violations of Act, Rule or Regulation**

Sec. 20. Any person violating any of the provisions of this Act or any rule or regulation made hereunder, shall be guilty of a misdemeanor except where such violation is expressly made a felony.

**Appropriations**

Sec. 21. All money deposited under the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund is hereby appropriated to effectuate the provisions of this Act in addition to any other appropriations by House Bill No. 111, Acts 53rd Legislature, Regular Session, for the biennium ending August 31, 1955.<sup>1</sup> Thereafter the number of employees and the salaries and travel allowances of each shall be as fixed in the biennial appropriation bill.

<sup>1</sup> Acts 1953, 53rd Leg., p. 127, c. 81.

**Partial Invalidity**

Sec. 22. If any of the provisions of this Act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity or constitutionality of any of the other provisions of this Act.

[Acts 1953, 53rd Leg., p. 385, ch. 106.]

**Art. 5577b. Grain Warehouse Act**

**Title**

Sec. 1. This Act shall be cited as the Texas Grain Warehouse Act.

**Definitions**

Sec. 2. For the purpose of this Act:

(a) "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(b) "Persons" means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity.

(c) "Grain" means wheat, grain sorghum, corn, oats, barley, rye, soybeans, and any other grain, peas or beans upon which federal grain standards are established. The commissioner may, by appropriate regulation, include field seed within this definition.

(d) "Public grain warehouse," hereinafter referred to as warehouse, means any building, bin, or similar structure used for receiving, storage, shipment or handling of grain for hire, or for purchase and sale of grain, or of grain on which payment is deferred. Providing, however, that nothing herein shall bring within the definition of public grain warehouse, any person, firm, or corporation whose primary business is manufacturing of or sale at retail of manufactured grain. Further, providing that any person,

firm, or corporation which receives grain, with the intent of ultimately using such grain for planting seeds, shall not be within the definition of a public grain warehouse in this Act, unless such person, firm, or corporation, in writing, requests of the Commissioner of Agriculture to be licensed as a public grain warehouse.

(e) "Warehouseman" means any person engaged in the business of operating a public grain warehouse as herein defined.

(f) "Depositor" means any person who deposits grain in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of any outstanding receipt, or who is lawfully entitled to possession of the grain.

(g) "Receipt" means a negotiable warehouse receipt issued by a warehouseman licensed under this Act.

(h) "Scale weight ticket", hereinafter referred to as ticket, means a load slip other than a receipt, given depositor by a warehouseman licensed under this Act, upon initial delivery of the grain to the warehouse. Such ticket shall be nonnegotiable.

(i) "License" includes any and all renewals and amendments thereof unless the context clearly indicates the contrary.

(j) "Storage grain" includes any grain received in any public warehouse, as in this Act defined, located in this state, and same is not purchased by the lessee, owner or manager of such warehouse, such grain shall be considered stored grain.

#### Powers and Duties of the Commissioner

Sec. 3. (a) The commissioner shall administer this Act and in its administration is authorized, in addition to any other powers conferred by this Act, to investigate the storing, shipping and handling of grain and complaints with respect thereto, including the inspection of any warehouse, the grain stored therein and all property and records pertaining thereto; to determine whether warehouses for which licenses are applied for or have been issued are suitable for proper storage, shipping and handling of grain which are, or are expected to be stored, handled or shipped; to require such reports as may be determined are necessary in the administration of this Act; to require a licensed warehouseman to terminate storage, shipping and handling agreements upon revocation of his license, to prescribe all forms, within the limitations set forth in this Act, including the form of receipts, bonds and application for licenses; and to promulgate all necessary rules and regulations for carrying out the provisions of the Act.

(b) The commissioner shall have power in the conduct of any hearing authorized to be held by him to examine, or cause to be examined, under oath, any person, and to examine or cause to be examined, books and records of

any licensee; to hear testimony and take proof material for his information in the discharge of his duties under this Act; to administer or cause to be administered oaths; and for any such purpose to issue subpoenas, to require the attendance of witnesses and the production of books which shall be effective in any part of this state; and any district or county court, or any judge thereof, either in term time or in vacation, may by order duly entered require the attendance of witnesses and the production of relevant books and records subpoenaed by the commissioner, and the court or judge may compel obedience to its or his order by proceedings for contempt.

(c) The commissioner is authorized to appoint and fix duties and compensation of inspectors and such other personnel and provide such equipment as may be necessary to assist him in enforcing the provisions of the Act.

#### License Required

Sec. 4. (a) No person shall operate a warehouse without first having obtained a license in his name covering such warehouse from the commissioner or continue to operate such warehouse after any such license has been revoked or suspended, except as provided in Section 14 hereof.

(b) All warehouses licensed under a single license shall be treated as a single warehouse for the purpose of this Act, including issuance of receipts, and receipt and shipment of grain. However, any part may be reserved and designated "not for public use", upon application to and approval of the commissioner.

(c) All warehouses owned or controlled by the warehouseman located in close proximity on the same general location may be considered as one unit for the purpose of determining the amount of bond and be included in the license.

#### Application for License and Renewal: Fees

Sec. 5. (a) A separate application for each license, renewal or amendment thereof shall be filed with the commissioner at such times, on such forms, and containing such information as shall be prescribed by the commissioner.

(b) Any application for a license, or renewal thereof, shall be accompanied by a license fee of \$10.00 for each license.

(c) No licensed warehouseman shall make use of any increased warehouse capacity without first obtaining approval of the commissioner.

#### Issuance of License

Sec. 6. The commissioner is authorized to issue and amend a license, or renewal thereof, upon approval of the bond and insurance filed by the applicant, upon determination that the warehouse covered by such application is suitable for the proper storage of grain and upon determination that the applicant has complied with the provision of this Act and regulations promulgated thereunder.

## Bond Requisites

Sec. 7. (a) Each applicant for a license to conduct a warehouse under this Act shall, as a condition to the granting thereof, file or have on file with the commissioner, a bond, running to the State of Texas, executed by the applicant as principal, and by a corporate surety licensed to do business in the State of Texas, as surety.

(b) Such bond shall:

(1) be in such form and contain such terms and conditions as the commissioner shall prescribe;

(2) be conditioned upon the faithful performance of all obligations of a licensed warehouseman under the terms of this Act and regulations hereunder from the effective date of the bond until the license is revoked or the bond is cancelled as provided in this Act, whichever occurs first; and

(3) be further conditioned upon the faithful performance from the effective date of the bond and thereafter, whether or not said warehouse remains licensed under this Act, of such obligations as a warehouseman under contract with depositors of grain in the warehouse as exists on the effective date of the bond or are thereafter assumed prior to the time the license of the warehouseman is revoked or the bond is cancelled as provided herein, whichever occurs first; and

(4) in an amount of bond to be that the net worth of the company shall be the equivalent of 15¢ per bushel of the storage capacity, and the bond shall be not less than 15¢ per bushel on the first million bushels; 10¢ per bushel on the second million bushels; 5¢ per bushel on all capacity above two million bushels, the bond not to be less than \$10,000.00 nor more than \$500,000.00.

In the event the net worth of the company is less than 15¢ per bushel based on storage capacity, then a deficiency bond shall be established for the difference in addition to the above mentioned bond. Continuance certificates or renewal certificates shall be acceptable for reissuance of warehouse license.

(c) The applicant may give a single bond meeting the requirements of this Act and all licensed warehouses operating by him shall be deemed as one warehouse for the purpose of this bond.

(d) In no event shall the liability of the surety on any bond required by this Act accumulate for each successive license period during which the bond is in force. The liability of the surety is limited in the aggregate to the face amount of the bond.

## Action by Depositor Upon Bond

Sec. 8. (a) If no action upon the bond of a licensed warehouseman is commenced within thirty days after written demand to the com-

missioner any depositor shall have a right of action upon such bond for the recovery of all damages suffered by such depositor by reason of the failure of the warehouseman to comply with any condition of his bond.

(b) Recovery under such bond shall be prorated when the claims exceed the liability under such bond: Provided, that it shall not be necessary for any depositor suing on such bond to join other depositors in such suit and the burden of establishing proration shall be on the surety as a matter of defense.

## Casualty Insurance; Recovery for Loss

Sec. 9. (a) Each applicant for a license to conduct a warehouse under this Act shall, as a condition to the granting thereof, file or have on file with the commissioner a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in the State of Texas insuring in the name of the applicant all grain which is or may be in the warehouse for their full market value against loss by fire, internal explosion, lightning, windstorm, cyclone, or tornado; provided that on certification by the warehouseman that all grain within the warehouse is actually owned by the warehouseman free of any lien, such insurance coverage would not be required.

(b) In case fire, internal explosion, lightning, windstorm, cyclone or tornado destroys or damages any grain in any licensed warehouse, the warehouseman shall, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership, make settlement, after deducting the warehouseman's charges and advances, at the market value of the grain based on the value at the average price paid for grain of the same grade and quality on the date of the loss at the location of the warehouse. In event such settlement is not made within 30 days from the date of such demand, the depositor shall have the right to seek recovery from the insurance company.

## Additional Bond and Insurance

Sec. 10. (a) Whenever the commissioner shall determine that a previously approved bond or previously approved insurance is insufficient, he shall require an additional bond or insurance to be given by the warehouseman, conforming with the requirements of this Act.

(b) The commissioner may require a bond from any warehouseman upon suspension, revocation or expiration of his license to protect depositors of grain so long as any receipts remain outstanding or uncanceled.

Cancellation of Bond and Insurance;  
Suspension of License

Sec. 11. (a) No licensed warehouseman may cancel an approved bond or approved insurance without prior written approval of the commissioner and his approval of a substitute bond or insurance. The surety on a bond may cancel a bond required by this Act only after

the expiration of ninety days from the date the surety shall have mailed a notice of intent to cancel, by registered or certified mail, to the commissioner. The surety and the insurance company shall, at the time of giving notice to the commissioner, send a copy of such notice to any other governmental agency requesting it. The commissioner shall promptly, upon receipt of any notice provided for in this section, notify the warehouseman involved.

(b) Notwithstanding any other provisions of this Act, the license of a warehouseman shall automatically be suspended for failure to

(1) file a new bond within the ninety day period as provided in this section, or

(2) file new evidence of insurance within thirty day period as provided in this section, or

(3) maintain at all times a bond and insurance as provided in this Act.

Such suspension shall continue as long as any such failure exists.

#### Warehouse Inspections and Fees

Sec. 12. (a) Every licensed warehouseman shall, when requested by the commissioner, make a report to the commissioner on the condition, conduct, operation and business of each warehouse he operates and the grain stored therein.

(b) Warehousemen shall permit any representative or agent of the commissioner to enter and inspect each licensed warehouse and its contents and the records related to stored grain thereof, and shall render any assistance necessary in checking any condition or records in connection therewith.

(c) The commissioner shall inspect and collect for one annual examination of each warehouse, unless additional inspections are made at the request of the warehouseman. The inspection fee shall be at the rate of \$1.00 for each ten thousand bushels of licensed storage capacity or fraction thereof of the warehouse inspected. In no case shall such fee be less than \$15.00.

(d) The commissioner may make as many inspections as he deems necessary, provided, that no more than one inspection fee per year is charged the warehouseman.

#### Suspension, Revocation, and Denial of License

Sec. 13. The commissioner is authorized to suspend, revoke or deny a license in any case in which he determines, after opportunity for a hearing, that there has been violation of or failure to comply with the requirements of this Act or the regulations promulgated thereunder. The commissioner, whenever he deems necessary, may suspend a license temporarily without hearing, for a period not to exceed thirty (30) days.

#### Operation After Revocation or Suspension of License

Sec. 14. (a) When a license is revoked, the warehouseman shall terminate, in the manner

prescribed by the commissioner, all arrangements covering storing, shipping or handling of grain in the warehouse, covered by such license, but shall be permitted, under the direction and supervision of the commissioner, to deliver grain previously received.

(b) During any suspension of a license, the warehouseman may, under the direction and supervision of the commissioner, operate the warehouse, but shall not receive grain for storing, shipping or handling during the term of such suspension.

#### Duty of Warehouseman to Receive: Issuance of Tickets and Receipts

Sec. 15. (a) Every licensed warehouseman shall, upon receiving grain, issue to the person from whom the grain was received, a serially numbered ticket in a form approved by the commissioner. Such tickets shall be nonnegotiable.

(b) Upon application of the depositor, the warehouseman shall issue to the depositor a warehouse receipt in a form prescribed by the commissioner and in conformity with Chapter 7, Texas Business & Commerce Code. Warehouse receipts issued under this chapter shall be subject to all the provisions of Chapter 7, Texas Business & Commerce Code.

(c) No two receipts bearing the same number shall be issued by the same warehouse during any one calendar year.

#### Receipt for Grain Owned by Warehouseman

Sec. 16. A licensed warehouseman may issue a receipt for grains owned by him, in whole or part, located in his licensed warehouse. The negotiation, transfer, sale, or pledge of any such receipt shall not be defeated by reason of such ownership.

#### Obligation of Warehouseman to Deliver

Sec. 17. The obligation of a warehouseman to deliver grain to a person holding a receipt for grain stored in the warehouse is controlled by Section 7.403, Texas Business & Commerce Code.

#### Termination of Storage at Warehouseman's Option

Sec. 18. A warehouseman desiring to terminate the storage of any person's grain in his warehouse shall do so according to the provisions of Section 7.206, Texas Business & Commerce Code.

#### Duplicate Receipts

Sec. 19. (a) While a receipt issued under this Act is outstanding and uncanceled by the licensed warehouseman issuing same, no other or further receipt shall be issued for the grain covered thereby or any part thereof, except that in case of lost, stolen or destroyed receipt, the owner shall be entitled to a new receipt shown to be duplicate or substitute for the missing receipt. Such duplicate or substitute receipt shall be endowed with all rights appertaining to the document for which it was issued, and shall state that it is in lieu of the

former receipt giving the number and date thereof. The warehouseman shall require an indemnity bond of double the market value of the grain covered by such missing receipt, in such form and with such surety as may be prescribed by the commissioner, as will fully protect all rights under the missing receipt.

(b) No licensed warehouseman shall become a surety on a bond for a lost, stolen, or destroyed receipt.

#### Records

Sec. 20. (a) Every warehouseman conducting a warehouse under this Act shall keep in a place of safety complete and correct records and accounts pertaining to the licensed warehouse, including records and accounts of all grains received therein and withdrawn therefrom, of all unissued receipts in his possession, of all receipts and tickets issued by him, and of the receipts returned to and cancelled by him. Such records shall be retained by the warehouseman for such period as may be prescribed by the commissioner; provided, that copies of receipts or other evidencing ownership of any grains or liability as a warehouseman shall be retained so long as such documents are outstanding, and any such document which has been cancelled shall be retained for a period of not less than two years from the date of cancellation.

(b) All cancelled receipts shall be clearly marked "cancelled" setting forth date of such cancellation.

(c) All such records and accounts shall be kept separate and distinct from records and accounts of any other business, and shall be subject to inspection by the commissioner at all reasonable times.

#### Posting of License

Sec. 21. Each licensed warehouseman shall immediately upon receipt of a license post it in a conspicuous place in the office of the licensed warehouse.

#### Receipt Forms; Printing; Cash Bond; Recovery

Sec. 22. (a) All receipt forms shall be supplied by the commissioner except where commissioner, in writing, approves the form and gives permission to a warehouseman to have receipts printed. Requests for receipts shall be on forms furnished by the commissioner and shall be accompanied by payment to cover estimated cost of printing, packaging, and shipping, as determined by the commissioner. Where privately printed, the printer shall furnish the commissioner an affidavit showing the amount of the receipts printed, and the serial numbers, thereof, and the warehouseman shall, at the discretion of the commissioner, furnish a bond in such form and in such amount not to exceed Five Thousand Dollars (\$5,000.00) as determined by the commissioner, to cover any loss resulting from the unlawful use of any receipt.

(b) All receipts remaining unused shall be recovered by the commissioner if the license

required by this Act is terminated or suspended.

#### Remedies of the Commissioner on Discovery of Shortage or Refusal to Submit to Inspection

Sec. 23. (a) Whenever it appears to the satisfaction of the commissioner that a licensed warehouseman has not in his possession sufficient commodities to cover the outstanding receipts and outstanding tickets issued or assumed by him, or when such warehouseman refuses to submit his records or property for lawful inspection, the commissioner may give notice to the warehouseman to comply with all or any of the following requirements:

- (1) Cover such shortage;
- (2) Give additional bond as requested by the commissioner;
- (3) Submit to such inspection as the commissioner may deem necessary.

(b) If such warehouseman fails to comply with the terms of such notice within twenty-four hours from the date of its issuance, or within such further time as the commissioner may allow, the commissioner may petition the district court for the county where the licensed warehouseman's principal place of business is located (as shown by the license application) for an order: Authorizing the commissioner to seize and take possession of all or a portion of any and all grains located in the licensed warehouse or warehouses of such warehouseman, and of all pertinent records and property.

(c) Upon taking possession the commissioner shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of records, as shown by the warehouseman's records, of all receipts and tickets issued for grains, to present their receipts or tickets for inspection, or to account for the same. The commissioner may thereupon cause an audit and other investigation to be made of the affairs of such warehouse, especially with respect to the grains in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if practicable. The commissioner shall notify the warehouseman and the surety on his bond for the approximate amount of such shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

(d) The commissioner shall retain possession obtained under this section until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all depositors, or until such time as the commissioner is ordered by the court to surrender possession.

(e) If during or after the audit or other investigation provided for in this section, or at any other time, the commissioner has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all depositors, the commissioner may petition the district court

for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with law.

(f) At any time within ten days after the commissioner takes possession, the warehouseman may serve notice upon the commissioner to appear in the district court of the county in which such warehouse is located at a time to be fixed by such court, which shall not be less than five, nor more than 15 days from the date of the service of such notice, and show cause why such possession should not be restored to the warehouseman.

**Injunction Against Operating Without a License or Interfering With the Commissioner**

Sec. 24. If after 15 days notice, the warehouseman refuses to comply with this Act, the commissioner shall apply for, and the courts of this state are vested with jurisdiction to issue, a temporary or permanent injunction against the operation of a warehouse, or the issuance of receipts or tickets, without a license, and against interference by any person with the carrying out by the commissioner, or by any receiver appointed under Section 23 of this Act, of its duties and powers under this Act.

**Penalties**

Sec. 25. (a) Unless otherwise provided in this Act, every person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00).

(b) Any person who shall transact any public warehouse business without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked or suspended except as provided in Section 15, shall upon conviction thereof be fined in any sum not less than \$100.00, or not more than \$500.00 for each day such business is carried on.

(c) Every person who issues or aids in issuing a receipt or ticket knowing that the grain for which such receipt or ticket is issued has not been actually received at the licensed warehouse, every person who issues or aids in issuing a duplicate, or additional negotiable receipt for grain knowing that a former negotiable receipt for the same grain or any part thereof is outstanding and uncanceled, except in case of a lost, stolen, or destroyed receipt, as provided in Section 20, and every person who shall fraudulently and without proper authority represent, forge, alter, counterfeit or simulate any license provided for in this Act, shall be guilty of a felony and upon conviction shall be subject to a fine not exceeding Five Thousand Dollars (\$5,000.00) or imprisonment not exceeding five (5) years, or to both.

(d) Except in case of sale or other disposition of the grain in lawful enforcement of the warehouseman's lien or on warehouseman's

lawful termination of storage, shipping or handling agreements, or except as permitted by regulations of the commissioner when necessary to effectuate the purpose of this Act:

(1) Every person who delivers any grain out of the warehouse for which a license has been issued, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of such grain is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery shall be subject to a fine not exceeding Five Thousand Dollars (\$5,000.00) or to imprisonment not exceeding five (5) years, or both.

(2) Any person who delivers any commodity out of warehouse for which a license has been issued, knowing that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior approval of the person lawfully entitled to delivery under such nonnegotiable receipt or ticket and without such delivery being shown on the appropriate records of the warehouseman, shall be subject to a fine not exceeding Five Thousand Dollars (\$5,000.00) or to imprisonment not exceeding five (5) years, or to both.

(e) Every person who fraudulently issues or aids in fraudulently issuing a receipt or ticket knowing that it contains any false statement shall be subject to a fine not exceeding Five Thousand Dollars (\$5,000.00) or to imprisonment not exceeding five (5) years.

(f) Every person who deposits grain to which he has not title, or upon which there is a lien or mortgage, and who takes for such grain a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, and every person who changes any receipt or ticket subsequent to issuance except for notations by the warehouseman or partial delivery, shall be subject to a fine not exceeding Five Thousand Dollars (\$5,000.00) or to imprisonment not exceeding five (5) years, or to both.

**Application Limited**

Sec. 26. The provisions of this Act shall not apply to any warehouse covered by a license issued under the United States Warehouse Act, and shall not apply to an individual producer-owner who does not receive from others grain for storage or handling for hire.

**Invalidation of Part of Act**

Sec. 27. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged invalid, such judgment, shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in which said judgment shall be returned.

Deposit of Fees

Sec. 28. All fees received by the commissioner under this Act shall be deposited to the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund.

Repeal of Conflicting Laws

Sec. 29. All laws and parts of laws in conflict herewith are hereby expressly repealed to the extent of conflict.

[Acts 1969, 61st Leg., p. 2415, ch. 811, eff. June 14, 1969; Acts 1971, 62nd Leg., p. 2630, ch. 862, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 818, ch. 369, § 1, eff. June 12, 1973.]

CHAPTER THREE. MARKETS AND WAREHOUSE CORPORATIONS

Article

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Art. 5578. Application for Charter

Any number of persons, not less than ten, at least sixty per cent of whom shall be engaged in agriculture, horticulture, or stock-raising as a business, and not less than three-fourths of whom shall be resident citizens of Texas, may apply to the Commissioner of Markets and Warehouses<sup>1</sup> for a charter to permit them to organize and operate as a co-operative association, under the provisions of this chapter. In cities of a population of forty thousand or over, the above provisions shall not apply. The application for such charter shall contain the information required by the general corporation laws, and also state the number of its directors, which shall not be less than three, nor more than twenty-five and the name and residence of those selected for the first year.

The application shall be accompanied by the affidavit of three of such applicants, showing

that no less than fifty per cent of the capital stock is actually paid in, which capital stock shall be, in no instance, less than five hundred dollars, divided into shares of five dollars each. If the same has been paid in otherwise than in cash, then a detailed statement as to the kind, character, and value of the property in which paid shall be made a part of the affidavit.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

Art. 5579. Powers of Corporation

Corporations chartered hereunder shall have the right to act and do, and perform generally, all things which may be done and performed by warehousemen. Such corporations may sell in the market all products of the farm, ranch or orchard, on a commission basis, or such other basis as may be agreed upon by them with their customers. They may purchase, construct or lease all such warehouses, landings and buildings, as may be necessary for their business. They may employ such other instrumentalities and agencies as may be necessary for the storage, preservation and marketing of farm, ranch, and orchard products, to the best advantage of the members and customers. They may loan money upon products placed in their warehouses; provided, that the amount loaned thereon shall not exceed seventy-five per cent of the market value of the property so placed with them. They may loan money upon chattel mortgages, to their members only, for the purpose of enabling them to make and mature their crops, but such chattel mortgages shall always be upon property of at least double the value of money loaned thereon. They may loan money on crop mortgages, but such crop mortgages must always be the first mortgage thereon, exclusive of the landlord's lien, and shall always be secured by an acreage, which, under ordinary general conditions, would produce double the amount loaned thereon. They may invest their capital stock and surplus in a home office building, and may also invest such capital stock, surplus, and undivided profits in United States bonds, Texas State bonds, county, city district, and municipal bonds, and road bonds in the State of Texas; provided, such bonds are issued by authority of law, and interest upon them has never been defaulted. Such corporations shall never receive deposits, nor discount commercial paper generally, but may make such character of loans and investments as are herein provided for; provided, such corporations shall never be permitted to loan money upon chattel mortgages, crop mortgages, or personal security, except to their members, and then only to enable them to make, mature, and gather their crops, or market their farm, ranch or orchard products. They may erect, purchase or lease, and operate warehouses, buildings, elevators, gins, storage tanks, silos, and such other places of storage

and security as may be necessary for the storage, grading, weighing and classification of cotton, and all farm products, and for the purpose of preparing such products for the market.

[Acts 1925, S.B. 84.]

#### Art. 5580. May Issue Bonds

Such corporations shall have authority to contract debts, as have other business corporations, and may issue special bonds, to be known as "sinking fund bonds" as follows: They may invest all or any part of their capital stock in such securities as are herein designated for the payment or investment of their capital, which, when approved by the Commissioner,<sup>1</sup> shall be deposited in the State Treasury. The interest on such investments shall be annually paid into the State Treasury, and be placed to the credit of the sinking fund for the liquidation of bonds of such corporations, and the interest shall be invested from time to time by the Commissioner<sup>1</sup> in similar securities, which in turn shall be deposited in the State Treasury. Such securities, when so deposited in the State Treasury, shall remain there as the sinking fund out of which the principal sum of the bonds herein provided for shall be paid, and said securities shall not be used for any other purpose than to liquidate the bonds herein provided for, unless, and until, such sinking fund bonds have been paid; in which event, the securities herein provided for shall be returned to the corporation owning same, and shall become a part of the general assets of the corporation. After the investment in such securities has been made, the Commissioner<sup>1</sup> shall grant authority to the corporation to issue bonds in double the amount of such original capital stock, to bear not greater than six per cent interest, and to run not exceeding thirty years. When said bonds have been issued and signed by the proper officers of the corporation, they shall be registered by the Commissioner<sup>1</sup>. Said bonds shall show on their face that the principal thereon is secured by the securities herein required to be deposited in the State Treasury, and shall have plainly written, printed, lithographed, or engraved, on their face the words, "Sinking Fund Bonds of \_\_\_\_\_ State Bonded Warehouse," with the post-office address of the corporation, the blank space to be filled in with the name of the corporation. Said bonds shall show on their face that the interest contracted to be paid therein is secured to them by the general assets of the corporation. After said bonds have been issued and registered by the Commissioner<sup>1</sup> they shall be returned to the proper officer of the corporation issuing them, and may then be by such corporation placed on the market and sold; but they shall never be sold at less than ninety per cent of their face value.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5581. Fees and Certificate

When such an application for charter is filed with said Commissioner,<sup>1</sup> and approved by him, the Secretary of State shall, upon notice of such filing and approval, and the payment of the following fees: Five dollars for five thousand dollars, or less; ten dollars for ten thousand dollars, or more than five thousand dollars; and twenty-five dollars for all over that amount, issue a charter to the applicants; and thereupon the Commissioner<sup>1</sup> shall record said charter, and furnish the corporation a certified copy thereof; and he shall issue to the corporation a certificate of authority showing that it has complied with the laws of the State of Texas, and is authorized to do business until the last day of April of the succeeding year. No charter fee shall exceed twenty-five dollars.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5582. Bond

Before said charter is delivered to the corporation, and before said certificate is furnished, the corporation shall execute, by its proper officers, a bond, payable to the State of Texas, the amount of such bond to be determined by the Commissioner.<sup>1</sup> The amount of any such bond may be changed from time to time, in accordance with the volume of business done or to be done by the corporation; and such bond shall be approved by the Commissioner<sup>1</sup> before it is filed. Such bond shall be conditioned that the corporation will observe all provisions of this law, and the rules of the Commissioner<sup>1</sup>, in so far as its business is regulated and controlled by them; and that the corporation will exercise ordinary care in the storage, preservation, and handling of all farm, ranch, and orchard products intrusted to it for storage or sale, or both; and shall also guarantee the classification, weights, grades and measures made by the corporation, or under its authority, as approximately correct.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5583. Breach and New Bond

The bond herein provided for shall indemnify any person who may be damaged by any statement made by the corporation, or under its authority, in any certificate it may issue for such product stored with it. Such bond may be sued upon by any person sustaining damage by reason of any breach of its condition, growing out of any fault or dereliction of duty by said corporation, or any person authorized to act for it. If any such bond shall become impaired from any cause, the Commissioner<sup>1</sup> may require the maker to furnish a new and sufficient bond, by written notice, and if such impairment is not made good within thirty days after notice, the Commissioner<sup>1</sup> shall have au-

thority to proceed to close the doors of the corporation, liquidate its affairs, and discharge its debts, as is provided for in this chapter. In the event the Commissioner<sup>1</sup> shall take charge of such corporation, he is empowered to collect by suit, or otherwise, the full amount of the bond, or so much thereof as is necessary, which taken with the other assets of the corporation, may be found sufficient to discharge its obligations.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5584. Directors and Meetings

The property and business of corporations chartered hereunder shall be controlled and managed by a board of directors of not less than three, nor more than twenty-five in number, who shall be members of the corporation, and bona fide citizens of Texas, and no member of the board of directors of one such corporation shall be a member of a board of directors of any other such corporation. The directors shall be elected annually, at a general meeting of the directors of such corporation, which meeting shall be held at such time and place as may be prescribed by the by-laws of the corporation. The notice of such meeting shall be mailed to each member at least two weeks before the date set for the same. Each member of the corporation, at all general and special meetings of the same, shall have one vote, and no more. The directors may appoint, or remove any officer or employee at pleasure.

[Acts 1925, S.B. 84.]

#### Art. 5585. Statement of Affairs

The Commissioner<sup>1</sup> shall, also, at least twice each year, and more if deemed necessary, require each such corporation to file in his office upon forms prescribed by him, a statement of its affairs, showing the condition of its reserve fund, its assets and liabilities, and such other information as he may deem advisable. Such statement shall be made upon the oath of one of the managing officers of the corporation, and shall be attested by at least a majority of its directors.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5586. Examination of Affairs

Every bonded warehouse corporation chartered under the laws of this State shall be subject to the supervision and control of the Commissioner,<sup>1</sup> and he shall make, or cause to be made, an examination of the affairs and dealings of each such corporation, at its expense, at least once each year, and at such other times as the Commissioner<sup>1</sup> may deem necessary. If, upon examination, any such corporation is found to be insolvent, or has exceeded its powers, or its business is being conducted

in an unsafe manner, or it has failed to comply with any provision of this chapter within a reasonable time, not to exceed, in any event, thirty days, the Commissioner<sup>1</sup> shall report the condition of the corporation to the Attorney General, who may bring such action as the necessities of the case and law may require.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5587. Expense of Examination

The expense of each regular and special examination of corporations chartered under this chapter shall be paid by the corporation examined, in such an amount as the Commissioner<sup>1</sup> shall certify to be just and reasonable. Such expense shall be paid in proportion to the capital stock of the various corporations, as follows: Those with a capital stock of less than twenty-five hundred dollars shall not pay more than five dollars; those with a capital stock of two thousand five hundred dollars, and not exceeding ten thousand dollars, not exceeding ten dollars; those with a capital stock of twenty-five thousand dollars, and not less than ten thousand dollars, not exceeding twenty dollars; those with a capital stock of one million dollars or more, shall pay not exceeding two hundred dollars, for each examination. All money collected as examination fees shall be paid by the Commissioner<sup>1</sup> directly into the State Treasury to the credit of the general revenue fund.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5588. Amenable to General Laws

Every corporation organized under this chapter shall be amenable to and subject to all laws of this State governing corporations generally.

[Acts 1925, S.B. 84.]

#### Art. 5589. Limitation of Authority

No officer or employee shall have power to indorse, sell, pledge, or hypothecate any bond, note or other obligation received by such corporation, or any property deposited with it as warehousemen, until such power and authority shall have been given such officer or employee by the board of directors, in a meeting of the board, regularly called and held; a written record of which proceedings shall have first been made upon the minutes of the corporation; and all such acts of any officer or employé, indorsing, selling, pledging, or hypothecating any such pledge or property, shall, without the authority of the board of directors, as herein provided, be null and void.

[Acts 1925, S.B. 84.]

#### Art. 5590. Division of Profits

Every corporation organized hereunder may divide its profits among its members, in pro-

portion to the amount of business transacted for each said member, after having paid dividends to each member, on the amount which each of said members has paid into the capital stock of the company, subject, however, to the following provisions: Twenty per cent of the net profit on each year's<sup>1</sup> business shall annually be paid into the reserve fund, until the reserve fund shall equal twice the amount placed in the capital stock at the time the corporation was chartered; the balance of the net profits shall be divided in accordance with the by-laws of the corporation; provided, that the subscribers to the capital stock shall first be entitled to a ten per cent dividend, or such less amount as may be stated in the by-laws for each year, before the remainder thereof is divided among the members in proportion to the amount of business transacted for each member.

[Acts 1925, S.B. 84.]

<sup>1</sup> Probably should be "year's."

#### Art. 5591. Failure to Obey Law

If any corporation subject to the provisions of this chapter shall refuse to submit its books, and papers, and correspondence, for inspection, to the Commissioner<sup>1</sup> or any of his authorized examiners; or, if any officer or directors of any such corporation shall refuse to be examined on oath touching the business and property of the corporation; or, if it shall be found to have violated its charter, or any law of the State binding upon it, the Commissioner<sup>1</sup> shall report the facts to the Attorney General, who shall institute such proceedings against such corporation as is authorized to be instituted against insolvent corporations.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5592. Certificate of Qualification

Before any such corporation shall be permitted to open its doors for business and in order for it to continue to transact business, the employé or officer in active management shall obtain a certificate from the Commissioner<sup>1</sup>, certifying that he is qualified and authorized to perform the duties of said corporation. In order to receive such certificate such person must present satisfactory evidence to the Commissioner<sup>1</sup> that he is competent to discharge the duties of such position. Upon receiving satisfactory evidence of qualification, and upon the payment of a filing fee of one dollar, the Commissioner<sup>1</sup> may issue to any applicant therefor a certificate showing that such applicant is qualified. The life of any such certificate shall not exceed two years, at the expiration of which time the applicant must obtain a new certificate.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5593. Unsafe Corporation

Whenever, after examination, the Commissioner<sup>1</sup> shall have reason to believe that the capital stock of any corporation subject to the provisions of this chapter is impaired, he shall, by written notice, require the corporation to make good the impairment. Whenever it shall appear to the Commissioner,<sup>1</sup> from any examination made by an examiner, that such corporation is conducting its business in an unsafe, and unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such unsafe and unauthorized practice, and shall require a strict compliance with the requirements of the law. If wrong entries are made in the books of a corporation, or if wrong or unlawful uses of its funds have been made, the Commissioner<sup>1</sup> shall require that such entries be corrected and such sums as were unlawfully paid out shall be restored to the corporation by the person or persons responsible for the wrongful use thereof. If any corporation shall refuse or neglect to make any such report as hereinafter required, or to comply with any such order as aforesaid, or whenever it shall appear to the Commissioner<sup>1</sup> that it is unsafe or inexpedient for any such corporation to continue to transact business, by reason of neglect or mismanagement, or that any officer or director has abused his trust, or has been guilty of misconduct, or of malversation of his official position, injurious to the institution, or that it has suffered a serious loss by fire, repudiation, or otherwise, the Commissioner<sup>1</sup> shall communicate the facts to the Attorney General, who shall institute such proceedings as the nature of the case may require.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5594. Forced Liquidation

The court, or judge, in term time or vacation, before whom such proceedings may be instituted, shall have power to grant such orders as may be necessary to grant such relief as the evidence and the situation of the parties may require. If, from any examination made by the examiner, it shall be discovered that any such corporation is insolvent, or that its continuance in business will seriously jeopardize the interest of its stockholders or its creditors, the Commissioner<sup>1</sup> shall immediately close such corporation, and shall take charge of all its property and effects. Upon taking charge of any such corporation, the Commissioner<sup>1</sup> shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition. If the Commissioner<sup>1</sup> shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the safety of its shareholders and its creditors, he shall report the fact of its insolvency to the Attorney General. Upon receipt of such notice and information, the Attorney General shall in-

stitute proper proceedings, for the purpose of having a receiver appointed to take charge of such corporation, and to wind up its affairs and business for the benefit of its creditors and members; and the court, or judge thereof, in term time or vacation, after such notice and hearing, if it appear necessary, shall appoint a receiver to take possession of the property and effects of said corporation, for the purpose of winding up the business thereof. The Commissioner<sup>1</sup> may appoint a special agent to take charge of the affairs of any such insolvent corporation, until a receiver is appointed. The special agent so appointed shall qualify, give bond, and receive compensation, the same as regularly appointed warehouse examiners; such compensation to be paid by the corporation out of its assets, when allowed by the court as costs in the case of the appointment of a receiver. In no case shall any corporation continue in charge of such special agent for a longer period than sixty days.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5595. Voluntary Liquidation

Any such corporation may place its affairs and effects under the control of the Commissioner,<sup>1</sup> on notice to him, and by posting a notice on its front door as follows: "This institution is in the hands of the Commissioner of Markets and Warehouses of the State of Texas."<sup>1</sup> The posting of this notice, or a similar notice, by the Commissioner,<sup>1</sup> or under his direction, that he has taken possession of any corporation, shall be sufficient to place the property and assets of the corporation, of whatever nature, in possession of said Commissioner<sup>1</sup> and shall operate as a bar to any and all attachment proceedings.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5596. Warehouse Examiners

The Commissioner<sup>1</sup> shall, from time to time, appoint such number of State warehouse examiners as he may deem necessary to make examination of public warehouses, and corporations chartered under this chapter, which number shall at no time exceed one examiner for each fifty corporations and public warehouses subject to examination under this chapter and laws of this State. As full compensation for the performance of the duties of examiner, each person so appointed shall be entitled to receive a salary of not exceeding two thousand dollars per annum, and all reasonable necessary expenses, including hotel bills. An itemized and sworn account of such expenses shall be presented to the Commissioner<sup>1</sup> for approval. Every warehouse examiner appointed by the Commissioner<sup>1</sup> shall be a cotton grader and classer, and a competent book-keeper.

Such examiner shall first make and file with the Commissioner<sup>1</sup> an affidavit that he will make fair and impartial examinations; that he will not accept directly or indirectly any gift or pay for any service done in the line of his duty other than the pay fixed by law, and that he will not reveal the condition of any corporation or public warehouse examined by him, or give out any information secured in the course of any examination to any one except the Commissioner<sup>1</sup> and except when requested to do so in court.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5597. Appointment of Examiners

No such examiner shall be appointed who is, at the time, an officer or stockholder in any warehouse company or corporation, or who owns any interest in any warehouse; or in any firm or corporation engaged in the purchase or sale of farm, ranch or orchard products, on commission or otherwise. No such examiner shall be appointed receiver of any State bonded or public warehouse company whose papers and affairs he shall have examined. Each such examiner shall give a bond payable to the State of Texas, in the sum of five thousand dollars, to be approved by the Commissioner,<sup>1</sup> conditioned that he will faithfully perform his duties as such examiner.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5598. May Deny or Revoke Permit

The Commissioner<sup>1</sup> shall have power to deny a permit to do business under this chapter and to revoke a permit when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5599. Safety First

The Commissioner<sup>1</sup> shall have power to prohibit the storage of cotton or other inflammable commodities in an unsafe building, or require a storage house to be remodeled within certain specified dates, so as not to unduly hamper the conduct of the business and the convenience of the public.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5600. Fire Insurance

The Commissioner of Agriculture shall require fire insurance by blanket policies or indi-

vidual policies, in some solvent insurance company chartered under the laws of this State or having a permit to do business in the State, to be carried by all warehouse corporations operating under this chapter, and to require such other means and methods of protection from fire and weather, or depreciation of warehouse property, as the Commissioner may deem necessary in each case. No fire, fire and marine, marine or inland insurance company, doing business in this State shall expose itself to any one risk, either upon buildings of any character, or their contents, except when insuring cotton in bales, and grain, in an amount exceeding ten per cent of the aggregate of the paid up capital stock, and surplus, unless the excess shall be reinsured by such company in some other solvent insurance company legally authorized to do business in this State.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 119, ch. 59, § 1, eff. April 26, 1973.]

#### Art. 5601. Charge for Storage

All charges for storage in warehouses operating under the provisions of this and the preceding chapter, shall be subject to limitation and regulation by the Commissioner<sup>1</sup> to the extent of fixing a minimum charge therefor. The charges so fixed need not be the same at all places or at all times, but the Commissioner<sup>1</sup> may take into consideration the local conditions, and the volume of business of each warehouse. In fixing charges for gin compressed cotton, consideration shall be given to the size of the bale.

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5602. Standards of Weights and Measures

The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this chapter. It shall be the duty of the Commissioner<sup>1</sup> to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards so established shall be maintained, subject to public inspection, in the office of the Commissioner<sup>1</sup> at all reasonable times; and duplicates of such standards as well as the standards of weights and measures, shall be furnished by the Commissioner<sup>1</sup> to all persons who may apply therefor, under the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification by persons storing products therein; provided, that the standards of classification shall always be the standards estab-

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lished by the Government of the United States, or of this State.

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5603. Liability of Corporation

The liability of a corporation chartered and operating under this chapter for warehouse purposes, shall be that of a public warehouseman, and it shall have the same rights as a public warehouseman, including a lien for storage, insurance, and other warehouse charges, as well as for charges for any service performed by it.

[Acts 1925, S.B. 84.]

Arts. 5604 to 5607. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102; eff. June 30, 1966

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5604 to 5607 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, also, Business and Commerce Code, §§ 7.206, 7.209, 7.210, 7.403.

#### Art. 5608. Forms

The Commissioner<sup>1</sup> shall prescribe all the forms of receipts, certificates and records, of whatsoever description necessary in the conduct of warehouses under this chapter, but all such receipts, certificates and forms shall be drawn in accordance with the terms of this title. All warehouse receipts shall be of uniform character, in the same class as prescribed by the Commissioner.<sup>1</sup>

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

Art. 5609. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102; eff. June 30, 1966

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed article 5609 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, §§ 7.104, 7.501 et seq.

**Art. 5610. Receipts**

All receipts shall be numbered consecutively, in the order of their issuance, and a record of such receipt shall be kept at the office of the company. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in case of a lost or destroyed receipt, in which case a new receipt shall be issued, which shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." In addition to the other provisions, each receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton or other products for which it is issued, showing whether a pre-existing and unsatisfied lien of any kind exists against it. If there be a landlord's lien, or such unsatisfied lien, or incumbrance, or lien of any kind, on said cotton, or other products, at the time of its storage, the amount of the claim shall be clearly set out; and it is made the duty of the manager issuing the receipt to have said blank filled in and signed by the owner of the cotton, or other product before issuing a negotiable receipt for the same; provided, however, such statement may not be made if a non-negotiable receipt is desired. When cotton grown on rented or leased premises is tendered for storage in a State warehouse, in addition to the foregoing instruments, all receipts issued therefor shall be issued jointly, in the name of the owner and the landlord, showing their respective interests in such cotton, unless the tenant or person storing the same presents authority from the landlord, or from the tenant, as the case may be, requesting the issuance of a receipt in the name of the one or the other, which request shall be in writing, and filed with the manager of the warehouse. If the person holding a non-negotiable receipt desires to obtain a negotiable receipt in lieu thereof, he shall return the non-negotiable receipt to the warehouse issuing the same and thereupon shall comply in every respect with the provisions of this Act, relating to negotiable receipts, and upon compliance with which a negotiable receipt shall be issued to him in lieu of the non-negotiable receipt. When the non-negotiable receipt is surrendered or canceled, the word "canceled" shall be plainly marked or stamped in ink, across the face thereof. No warehouse receipt shall be issued except on the actual previous delivery of the goods in the warehouse or on the premises under the control of the manager thereof.

[Acts 1925, S.B. 84.]

**Art. 5611. All Warehouses Included**

All warehouses now or hereafter operating under an Act passed by the Thirty-third Legislature of Texas, and known as the "Public Warehouse Act," are hereby placed under the management and control of the Commissioner,<sup>1</sup> and all chartered warehouses for the storing of farm, ranch or orchard products, not incorporated under this Act, may, by a majority vote

of its stockholders, upon application to the Secretary of State, upon payment of a fee of ten dollars, amend their charter so as to come under this Act. Such warehouses shall make such bonds as the Commissioner<sup>1</sup> may require, and such warehouses shall issue such receipts as are authorized by the Commissioner.<sup>1</sup>

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following this article.

**Abolition of Offices, Boards, etc., and Transfer of Duties and Functions****Office of Commissioner of Markets and Warehouses Abolished**

Sec. 1. The office of Commissioner of Markets and Warehouses of the State of Texas is hereby abolished, and the authority, duties, powers, functions, rights, and liabilities, heretofore vesting in said commissioner, shall hereafter vest in and be had and performed by the Commissioner of Agriculture. The Markets and Warehouse Department and the Weights and Measures Department of the State of Texas are hereby abolished, and the duties and functions of the same shall hereafter vest in the Commissioner of Agriculture.

**Board for Appointment of Commissioner Abolished**

Sec. 2. The board, consisting of the Governor, the Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, for the purpose of appointing a Commissioner of Markets and Warehouses, is hereby abolished.

**Board of Supervisors of Warehouses Abolished**

Sec. 3. The Board of Supervisors of Warehouses, consisting of the Governor, Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, is hereby abolished, and any authority, duties, powers, functions, rights, and liabilities of said board, existing under the law, shall hereafter vest in and be had and performed by the Commissioner of Agriculture.

**Commissioner of Agriculture; Powers and Duties**

Sec. 4. The Commissioner of Agriculture shall hereafter have and perform all the authority, duties, powers, rights, and liabilities heretofore vesting in the Commissioner of Insurance and Banking, or the Banking Commissioner of Texas or the Commissioner of Insurance, if any, relative to warehouses, except such as are conferred upon said Commissioner of Insurance and Banking by the provisions of Chapter 3 of the General Laws of the Second Called Session of the Thirty-third Legislature of this State.

**Commissioner of Agriculture; Administering Certain Laws**

Sec. 5. The power and authority to administer the provisions of Chapter 5 of the General

Laws of the Second Called Session of the Thirty-third Legislature; Chapter 41 of the General Laws of the First Called Session of the Thirty-fifth Legislature, and Chapters 116 and 126 of the General Laws of the Regular Session of the Thirty-sixth Legislature and such powers and duties as are conferred upon the Commissioner of Markets and Warehouses by Chapter 22, Acts of the Regular Session of the Thirty-seventh Legislature and Chapter 38 of the Second Called Session of the Thirty-eighth Legislature shall hereafter vest in the Commissioner of Agriculture, and it shall be his duty to administer said laws, or so much of same as may be in force.

#### Appropriations Available

Sec. 6. All appropriations heretofore made for the Markets and Warehouse Department and the Weights and Measures Department shall hereafter be available to the Commissioner of Agriculture to expend, as provided by law, in the execution of the work and the performance of the duties herein transferred; provided that the Commissioner of Agriculture shall be authorized to re-apportion and rearrange the duties of the office and of the employees and fix the salaries of said employees, where not fixed by law, and shall be authorized to discontinue any duties, work, or employees, in order to prevent a duplication of work already being performed, or authorized to be performed by the Department of Agriculture.

[Acts 1925, 39th Leg., p. 35, ch. 13.]

Revision Note. The above chapter abolishes the office of Commissioner of Markets and Warehouses and confers some, if not all, of his powers and duties on the Commissioner of Agriculture. Chapters 1, 2 and 3 of Title 93 are retained in order that it may be ascertained therefrom what are the powers and duties of the Commissioner of Agriculture.

#### CHAPTER FOUR. UNIFORM WAREHOUSE RECEIPTS ACT [REPEALED]

Arts. 5612 to 5655. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102; eff. June 30, 1966

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5612 to 5665 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 7.101 et seq.

#### CHAPTER FIVE. GINNERS AND COTTON

##### Article

- 5666. "Ginners."
- 5667 to 5674. Repealed.
- 5675. Marking Cotton.
- 5676. Wrapping Cotton.

##### Article

- 5677. Bailing of Cotton Regulated.
- 5678. Liability.
- 5679. Duty of Commissioner.
- 5679a. Regulating Public Cotton Classers.
- 5679a-1. Unlicensed Cotton Classer; Penalty.
- 5679b. Deduction From Agreed Price for Deficiency in Weight.
- 5679c. Recovery of Double Amount of Unlawful Deductions.
- 5679d. Substituting Sample; Penalty.
- 5679e. Fraudulent Certificate; Penalty.
- 5679f. Penalty for Noncompliance With Law.
- 5679g. Unlicensed Ginner; Penalty.
- 5679h. Ginner's Record; Penalty.

#### Art. 5666. "Ginners"

All persons, partnerships, joint stock companies or corporations operating in this State any gin ginning cotton for commercial purposes shall be known as ginners, and shall be charged with the public use.

[Acts 1925, S.B. 84.]

Arts. 5667 to 5669. Repealed by Acts 1933, 43rd Leg., p. 731, ch. 218, § 2

Arts. 5670 to 5674. Repealed by Acts 1951, 52nd Leg., p. 309, ch. 186, § 1

#### Art. 5675. Marking Cotton

Each ginner shall place on one side of each bale of cotton ginned by him "B\_\_\_\_\_ " filling in the blank by placing the same number therein as that of the bale as shown on the books of the gin ginning the same.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 657, ch. 271, § 1.]

#### Art. 5676. Wrapping Cotton

Each bale of cotton ginned by a licensed and bonded ginner in this State shall be so wrapped that the bale will be completely covered when compressed and that the ends of the bale shall be closed and well sewed. The quality of the bagging shall at all times be such that the markings thereon will, under ordinary conditions, remain intact and visible.

[Acts 1925, S.B. 84.]

#### Art. 5677. Bailing of Cotton Regulated

Every person, firm, corporation or association of persons, owning or operating a compress in this State, and their agents and employes, are hereby required, in compressing, re-compressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employes, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. Any such person, firm, corporation or association of persons, who shall fail to bind or tie any such

bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver or cause to be delivered, any such bale of cotton to any railroad company, or other common carrier, shall forfeit and pay to the State of Texas not less than fifty nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the State.

[Acts 1925, S.B. 84.]

#### Art. 5678. Liability

Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this State, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles, or splices used in tying or binding such bale or bales of cotton while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not the employee.

[Acts 1925, S.B. 84.]

#### Art. 5679. Duty of Commissioner

The Commissioner of Labor Statistics shall see that the provisions of the two preceding articles are observed and enforced. He shall obtain and collect evidence of any violation thereof upon the part of any person, firm, corporation, or association of persons engaged in the business of compressing cotton, who shall fail to comply with said provisions. Said commissioner shall file annual statements with the Governor, showing in detail all expenses incurred by him in connection with his duties under this law.

[Acts 1925, S.B. 84.]

#### Art. 5679a. Regulating Public Cotton Classers

##### Defining Cotton Classers

Sec. 1. All persons in this State, who shall hereafter grade cotton for the public, or who shall hereafter issue or cause to be issued, a receipt or ticket for cotton, and place on said ticket the grade of said cotton, which said ticket is intended for the use of the public in buying and selling said cotton, shall be known as Public Cotton Classers and before entering upon such duties, shall comply with the provisions of this Act. After complying with said provisions, such Classers shall be known as Registered Public Cotton Classers. Classers as herein referred to shall include every person, or persons who shall grade or staple cotton.

##### Qualifications

Sec. 2. All Public Cotton Classers shall furnish evidence of their good moral character, and, as evidence of their qualifications as Cotton Classers, they shall be required to obtain from the Secretary of Agriculture of the United States, a license to grade or staple cotton and to certify the grade and staple thereof in accordance with the official cotton standards of the United States Cotton Standards Act,<sup>1</sup> and file with the Commissioner of Agriculture of this State, hereafter called the "Commissioner", a duplicate thereof.

##### Bond

Sec. 3. Before any such licensee shall issue a certificate of classification in this State, except as provided in United States Cotton Standards Act, he shall file a bond with the Commissioner to be approved by him, in the sum of One Thousand (\$1,000.00) Dollars, which bond shall be so conditioned as to bind its maker and his sureties to guarantee as approximately correct, his work in classing and stapling cotton. It shall also bind the maker and his sureties to promptly indemnify any person who may sustain financial loss by reason of any false class or staple he may make, or by reason of any untrue or misleading certificate issued by him or under his authority, with intent to defraud. Such bonds shall be payable to the State of Texas for the use and benefit of any person or persons who may be damaged by the breach of its conditions, but it shall not be necessary to join the State in any suit on any such bond, the venue of such suit on any such bond shall be that of the general venue<sup>2</sup> by suit or otherwise, the Commissioner may, by written notice to the maker, require such impairments to be made good. If any such impairment is not made good, to the satisfaction of the Commissioner, within a reasonable time after notice, which time shall in no event, exceed thirty (30) days, such bond shall become null and void.

##### Record of Classer

Sec. 4. Each Public Cotton Classer in this State shall keep a complete record of cotton classed and for whom classed, in a well bound book, and shall issue a certificate to each person showing the class and other grade of the cotton classed by him. He shall also keep on hand, a set of the United States Standards of grades and staples and his books, records and standards shall be open to inspection of the public at all reasonable hours.

##### Form of Receipts and Records

Sec. 5. It shall be the duty of the Commissioner to prescribe all forms of receipts, certificates and records of whatever description necessary, but all such receipts, certificates and forms shall be drawn in compliance with this Act. He shall prescribe such rules and regulations as he shall deem proper, not in conflict with any provisions hereof. The Commissioner

shall have power and authority and it shall be his duty to enforce the provisions of this Act.

#### Fees

Sec. 6. Before any Public Cotton Classifier is registered under this Law, he shall pay over to the Commissioner a fee of Five (\$5.00) Dollars, said fee shall be paid annually along with the renewal of his said bond, such fee to be deposited in the State Treasury to the credit of the general revenue.

#### Right

Sec. 7. All Registered Public Cotton Classers shall have the right, at any time within this State, to engage in the business of Public Cotton Classers and shall be authorized to class and staple cotton generally, and to charge for their services. A certificate of classification of cotton issued by any person or persons under authority of this Act, shall be accepted in all the courts of this State, as prima facie evidence of the facts stated therein.

#### Rights to Class Own Cotton

Sec. 8. This Act shall not affect the right of anyone to class his own cotton or of any cotton buyer or other person to class cotton purchased by him for himself, or purchased for another, but applies to all other persons who engage in the business of classing cotton for the public or of issuing receipts and tickets therefor with the grade thereon, for the use of the public, as herein above provided.

#### Penalty for violation of Act

Sec. 9. Hereafter no person shall be permitted to engage in the business as Public Cotton Classifier, classing and stapling cotton for the public, or issuing receipts and tickets therefor, with the grade thereon, for the use of the public, as herein above provided, without complying with the provisions of this Act. Anyone violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine in any sum not less than Twenty-Five (\$25.00) Dollars, and not more than Two Hundred (\$200.00) Dollars.

#### Penalty for deceit or fraud

Sec. 10. If any person shall issue or cause to be issued, any certificate of sample, weight, grade or staple of any cotton, for commercial purposes, with intent to deceive or defraud, such person shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than Twenty-Five (\$25.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, and each instrument so issued shall constitute a separate offense.

#### Collections and Appropriations

Sec. 11. All moneys so collected shall be paid over by the Commissioner to the State Treasurer and shall be placed in the General Fund of the State.

[Acts 1931, 42nd Leg., p. 101, ch. 68; Acts 1931, 42nd Leg., 2nd C.S., p. 24, ch. 13.]

<sup>1</sup> 7 U.S.C.A. §§ 51 to 65.

<sup>2</sup> The words "statutes of this State. Should any such bond become impaired," which appeared in the original

act at this point were probably omitted from the amendatory act by mistake.

#### Art. 5679a-1. Unlicensed Cotton Classifier; Penalty

Whoever shall engage in business as a public cotton classifier, classing cotton for the public generally, without holding a license as a public cotton classifier, as provided by law, shall be fined not exceeding one hundred dollars.

[1925 P.C.]

#### Art. 5679b. Deduction From Agreed Price for Deficiency in Weight

When any buyer of spot cotton has made a bona fide bid for same from sample or bale and the sale price is agreed to between the buyer and seller, the buyer shall not make any deductions from the total value thereof as agreed to between the parties by reason of the weight of said bale of cotton, unless such bale shall weigh less than four hundred (400) pounds. If the bale weighs less than four hundred (400) pounds a deduction of not more than One Dollar (\$1.00) may be made by the buyer. Nothing contained herein shall prevent the buyer from refusing to accept a bale of cotton weighing less than three hundred and fifty (350) pounds.

[Acts 1933, 43rd Leg., p. 379, ch. 150, § 1.]

#### Art. 5679c. Recovery of Double Amount of Unlawful Deductions

If deductions or charges are made contrary to this Act, then the seller or grower of such cotton may recover from the buyer or ginner twice the amount of the deductions or charges in the same manner as is allowed for recovery by law for usury.

[Acts 1933, 43rd Leg., p. 379, ch. 150, § 2.]

#### Art. 5679d. Substituting Sample; Penalty

Whoever with intent to defraud shall substitute any sample of cotton or other farm product for a sample taken under authority of law shall be fined not less than twenty-five nor more than two hundred dollars.

[1925 P.C.]

#### Art. 5679e. Fraudulent Certificate; Penalty

Whoever shall issue, or cause to be issued, any certificate of sample, weight, grade, or class, of any cotton or other farm products, for commercial purposes, with intent to deceive or defraud, shall be fined not less than twenty-five nor more than two hundred dollars. Each instrument so issued shall be a separate offense.

[1925 P.C.]

#### Art. 5679f. Penalty for Noncompliance With Law

Whoever operates a cotton gin, either for himself or for another for commercial purposes, without complying with the laws of this State governing such ginner, shall be fined not less than twenty-five nor more than two hundred dollars.

[1925 P.C.]

**Art. 5679g. Unlicensed Ginner; Penalty**

Whoever shall operate any gin, ginning cotton for commercial purposes, without first obtaining a license as a licensed ginner from the Commissioner of Agriculture, shall be fined not less than twenty-five nor more than two hundred dollars.

[1925 P.C.]

**Art. 5679h. Ginner's Record; Penalty**

Every person, firm, corporation or association of persons owning, controlling or operating a public cotton gin shall keep or cause to be kept in a book a public record of all cotton brought to them for ginning and packing, showing correctly the amount of cotton received, date of its receipt, by whom brought to the gin, and the name or names of the party or parties claiming to own the same, and after ginning and packing said cotton shall place or cause to be placed on each bale of cotton the initials of the party or parties claiming to own said cotton, under which the ginner shall place some private ginner's mark and record, all of which shall be recorded in said book. Any ginner who fails, neglects or refuses to comply with any provision of this article shall be fined not exceeding twenty-five dollars.

[1925 P.C.]

**CHAPTER SIX. PUBLIC WEAHER**

**Article**

- 5680. "Public Weigher" Defined.
- 5680a. "Public Weigher" Defined.
- 5681. Appointment.
- 5682. Repealed.
- 5683. Election.
- 5683a. Office in Counties With Not Less Than 25,600 Nor More Than 25,700 Population.
- 5683b. Office in Counties With Not Less Than 55,700 Nor More Than 55,800 Population.
- 5684. Qualifications of Weigher.
- 5685. Term and Removal.
- 5686. Abolishing Elective Office.
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- 5688. Bond of Elective Weigher.
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- 5704. Owner May Weigh, etc.
- 5704-A. Public Weighers in Counties of 290,000 to 320,000; Election; Deputies; Bonds of Deputies.

**Art. 5680. "Public Weigher" Defined**

Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or

article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weigher, and shall comply with the provisions of this chapter. The provisions of this article shall not apply to the owners, managers, agents or employees of any compress or any public warehouse in their operation as a warehouseman. This exemption shall not apply in any manner to any Texas port.

[Acts 1925, S.B. 84.]

**Art. 5680a. "Public Weigher" Defined**

All persons engaged in the business of public weighing for hire, or any person who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce, or article is based, shall be known as a public weigher, and shall comply with the provisions of the law regulating public weighers, provided the provisions of this article shall not apply to any owner, manager, agent or employé of any compress or any public or private warehouse in their operations as a warehouseman. This law shall not apply in any manner to any Texas port.

[1925 P.C.]

**Art. 5681. Appointment**

The Secretary of State is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cotton seed; one hundred thousand bushels of grain or rice, one hundred thousand pounds of wool; five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Secretary of State to appoint a sufficient number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1144, ch. 508, § 1, eff. Aug. 28, 1967.]

**Art. 5682. Repealed by Acts 1967, 60th Leg., p. 1144, ch. 508, § 2, eff. Aug. 28, 1967**

**Art. 5683. Election**

In all counties other than Travis County in which there are no city or cities in which the Secretary of State is authorized to appoint public weighers, there shall be elected at the general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. The Commissioners Court at the regular February term preceding the election may unite two or more justice precincts for the purpose of electing such public weighers.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1144, ch. 508, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1341, ch. 506, § 1, eff. June 14, 1973.]

**Art. 5683a. Office in Counties With Not Less Than 25,600 Nor More Than 25,700 Population**

1. In and for all counties in this State having a population, according to the United States census of 1920, of not less than 25,600 people and not more than 25,700 people, there is created the office of public weigher, whose official headquarters shall be at the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher, and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable him to discharge his duties.

2. Such public weigher shall take the oath required by the Constitution of public officers, and shall give a bond in the sum of \$2,500.00, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.<sup>1</sup> The deputies of such public weigher shall take such oath and give bond in like manner, which bond, however, shall in the case of such deputies be in the sum of \$1,000.00.

3. At the first regular term of the commissioners' court of such counties, following the passage of this Act, such commissioners' court shall appoint a public weigher for its county, who shall serve until the next general election when his successor shall be elected.

4. This Act shall not be construed to suspend the operation of the present law, providing for the election of precinct public weighers, in the counties effected<sup>2</sup> by this law.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture.

See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

<sup>2</sup> Probably should be "affected."

**Art. 5683b. Office in Counties With Not Less Than 55,700 Nor More Than 55,800 Population**

Sec. 1. In and for all counties in this State having a population according to the United States census of 1920 not less than 55,700 and not more than 55,800 people, there is created the office of public weigher to be filled by two officers of equal rank, whose official headquarters shall be in the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable them to discharge their duties.

Sec. 2. Each of said public weighers shall take the oath required by the Constitution of public weighers and give a bond in the sum of \$2,500, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of

authority from the Commissioner of Markets and Warehouses.<sup>1</sup>

Sec. 3. Such public weighers shall be elected by popular vote of the entire county as other county officers. One of said weighers shall fill a place called Place No. 1 and the other shall fill the place called Place No. 2.

Sec. 4. This Act shall not be construed to suspend the operations of the present law providing for the election of Precinct Public Weighers in the counties affected by this law, except the precinct in which the county seat is located, and it shall not disturb the present Public Weighers, but shall take effect and be in force on and after January 1, A. D. 1927.

[Acts 1925, S.B. 84; Acts 1926, 39th Leg., 1st C.S., p. 21, ch. 14, § 1.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5684. Qualifications of Weigher**

No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected and is of a good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this law. No person shall be appointed or elected public weigher, or deputy public weigher who is interested in the buying or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employee.

[Acts 1925, S.B. 84.]

**Art. 5685. Term and Removal**

All public weighers appointed by the Secretary of State shall hold their office for the term of two years. The Secretary of State shall reappoint a public weigher designated by Exchanges and Boards of Trade who presently have Governor appointed public weighers as long as said Exchanges and Boards of Trade have such needs.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1144, ch. 508, § 1, eff. Aug. 28, 1967.]

**Art. 5686. Abolishing Elective Office**

When the people of any subdivision of a county that has an elective weigher may wish to abolish said office of public weigher, the commissioners court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for Governor at the last preceding election in the weigher's precinct, order an election to decide whether such office of public weigher of the subdivision named in the petition, shall be abolished or not. Said election shall be held in the same manner as other elections. If a majority of the votes of the subdivision of the county ordering said election shall be cast in favor of abolishing any office of public weigher, the commissioners court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years.

[Acts 1925, S.B. 84.]

**Art. 5687. Bond of Appointed Weigher**

Every public weigher appointed by the Secretary of State shall file a bond payable to the State of Texas in the sum of Five Thousand Dollars (\$5,000.00), conditioned that he will accurately weigh, or measure all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and accurate weight of the produce so weighed and that he will comply with the laws governing public weighers, and that he will not permit any one to molest, mutilate or destroy any article, produce or commodity while in his possession. Such bond shall not be void on first recovery, but may be sued on by any person injured by such public weigher. All bonds given by such public weighers or their deputies shall be subject to approval by the Commissioner of Agriculture. [Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1144, ch. 508, § 1, eff. Aug. 28, 1967.]

**Art. 5688. Bond of Elective Weigher**

Each public weigher elected for a precinct shall execute a bond payable to the county judge in the sum of five thousand dollars to be approved by the commissioners court, conditioned upon the faithful and impartial performance of the duties of his office. The bond of a weigher for a precinct where not over five thousand bales of cotton are received for sale or shipment shall be two thousand five hundred dollars.

[Acts 1925, S.B. 84.]

**Art. 5689. Filing Bond and Oath of Office**

Each public weigher, whether elected or appointed, before entering upon his duties as such, shall take and subscribe to the official oath and file said oath and his bond with the county clerk of the county in which he resides.

[Acts 1925, S.B. 84.]

**Art. 5690. Certificate of Authority**

All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses<sup>1</sup> a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct or shipping point for which he was elected or appointed.

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5691. Deputy Weighers**

Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the commissioners court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the

State of Texas, and shall be subject to the approval of the commissioners court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses,<sup>1</sup> before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing.

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5692. Special Weighers**

In all counties of this state in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton, or twenty-five thousand tons of cotton seed, or one hundred thousand bushels of grain, or two hundred thousand bushels of rice, or one hundred thousand pounds of wool, or five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Secretary of State to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. All such appointments shall be made a bond payable to the State of Texas, in the sum of Five Thousand Dollars (\$5,000.00), conditioned that he will accurately weigh, or measure, all commodities tendered to him in said county for weighing or measuring, and that all certificates of weight issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the law governing the conditions of bonds required of public weighers. Such bond so given shall not be void upon first recovery but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Agriculture, and all bonds and oaths of such public weighers or their deputies shall be filed with said Commissioner.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 74, ch. 54, § 1; Acts 1967, 60th Leg., p. 1145, ch. 508, § 1, eff. Aug. 28, 1967.]

**Art. 5693. Must Comply With Law**

No one shall be allowed to pursue the business of weighing for the public or grant a certificate or weight sheet upon which a purchase or sale is made unless he comply with the provisions of this chapter.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 74, ch. 54, § 1.]

**Art. 5693a. Penalty for Noncompliance With Law**

Any person, or agent or representative of any corporation, who shall engage in the busi-

ness of weighing for the public, or who shall grant or issue a certificate or weight sheet, upon which a purchase or sale is made without complying with the terms of the statutes regulating public weighers, shall be fined not less than twenty-five nor more than two hundred dollars. Each certificate so granted, or weight sheet issued by him is a separate offense.

[1925 P.C.]

#### Art. 5694. Commissioner to Supervise

All public weighers in this State as provided for in this chapter, shall be under the supervision of the Commissioner of Markets and Warehouses<sup>1</sup> and all weights made by them shall be subject to his approval. In any case where any discrepancy arises as to weights or measures of cotton or other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the Commissioner; and any party who may be dissatisfied with the weights or measures of any public or private weigher, may appeal to the Commissioner, and have such cotton or other farm products re-weighed or re-measured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the Commissioner, or his duly authorized representative. Compliance with this article shall be absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any court of this State. The authority herein conferred upon the Commissioner, to review the weights, shall not be construed as in any manner affecting the selection of public weighers or of fixing the charge to the public of such public weighers.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5695. Duty of Commissioner

The Commissioner of Agriculture shall issue a certificate of authority to all persons engaged in the business of weighing for the public; and shall charge such public weigher or deputy weigher a fee of Five Dollars (\$5) annually for said certificate. The Commissioner of Agriculture shall deposit the fee into the State Treasury to the credit of the Special Department of Agriculture fund. Revenues derived from such fees shall be used for administration and enforcement purposes. The fee shall be collected at the time the certificate of authority is issued and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher. It shall be the duty of the Commissioner of Agriculture, his deputies or agents to carefully and accurately test all scales, weights, beams and measures used by such public weighers every twelve months.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 190 ch. 100, § 1.]

#### Art. 5696. Weight Certificates

The Commissioner<sup>1</sup> shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of Weights and Measures. Such certificate shall state thereon the kind of produce; the number of same, the date of the receipt of the produce, the owner, agent, or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5696a. Weight Certificates

The Commissioner of Agriculture shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State Certificate of Weights and Measures; such certificate shall state thereon the kind of produce; the number of the same, the date of the receipt of the produce, the owner, agent or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade mark or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight.

[1925 P.C.]

#### Art. 5697. Seal

Every public weigher in this state shall provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof the words, "Public Weigher, Precinct No. \_\_\_\_\_, \_\_\_\_\_ County, Texas" or "Public Weigher, \_\_\_\_\_ City, Texas" which seal shall be impressed or printed upon each weight certificate issued by such public weigher, or deputy public weigher, on all weight sheets made out by them, but if the seal is printed, the weigher shall authenticate the same by signature.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 185, ch. 98, § 1.]

#### Art. 5698. Record of Weights

All public weighers shall keep and preserve in a well bound book a correct and accurate record of all weights by them, as provided in

this chapter, which record shall at all times be open for inspection to the public and to the Commissioner of Markets and Warehouses,<sup>1</sup> his deputies or inspectors. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5698a. Record of Weights

All public weighers, within this State, shall keep and preserve a correct and accurate record of all weights made by them, which record shall be open for the inspection of the Commissioner of Agriculture, his deputies or inspectors, and the public at any and all times. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by said Commissioner.

[1925 P.C.]

#### Art. 5699. Piled or Stored Separately

All amounts, lots, or shipments or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments or consignments, may be distinguished from other lots, shipments, or consignments of like kind.

[Acts 1925, S.B. 84.]

#### Art. 5700. To Tag or Mark Article

All public weighers in weighing any commodity, produce, or article, shall immediately tag or mark such commodity, produce or article that has been weighed by him so as to distinguish same from that which has not been weighed.

[Acts 1925, S.B. 84.]

#### Art. 5701. Re-weighing

When any doubt or difference arises as to the correctness of the net or gross weight of any amount, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent or consignee, may, upon complaint to the Commissioner of Markets and Warehouses,<sup>1</sup> have said amount, or part of any commodity, produce or article re-weighed by the Commissioner, or his deputy, or by a public weigher designated by the Commissioner by depositing with the Commissioner sufficient money to defray the cost of re-weighing such article or commodity. If on re-weighing, it is discovered that fraud or carelessness, or any faulty weighing apparatus was the cause of a discrepancy in weights, the cost of re-weighing shall, in all instances, be borne by the public weigher who issued the weight sheet or weight certificate.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5702. Suspension or Dismissal

Whenever any public weigher, or deputy public weigher appointed or elected under the provisions of this Chapter shall be guilty of malfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the Commissioners Court of the county in which he resides, or by the Secretary of State, should he be appointed by the Secretary of State. In all cases it shall be the duty of the Commissioner of Agriculture to file with the Commissioners Court or the Secretary of State the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten nor more than thirty days from the filing of such charges. The accused shall be furnished a copy of such charges and be notified of the date set for hearing of his case. He shall have the right to be represented by an attorney, to introduce evidence in his own behalf, and to have compulsory process for witnesses and the production of records. If he is found guilty, the Commissioners Court or Secretary of State shall immediately discharge him as a public weigher, provided, he may have the right of appeal to the district court of his county or to the District Court of Travis County.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1145, ch. 508, § 1, eff. Aug. 28, 1967.]

#### Art. 5703. Factor or Commission Merchant

It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified. Whoever violates any provision of this article shall be liable at the suit of the public weigher to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed.

[Acts 1925, S.B. 84.]

#### Art. 5704. Owner May Weigh, etc.

Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person. In places where there are no public weighers appointed or elected, any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond for twenty-five hundred dollars approved and payable as in case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner. This article shall not apply to merchant flouring mills.

[Acts 1925, S.B. 84.]

**Art. 5704-A. Public Weighers in Counties of 290,000 to 320,000; Election; Deputies; Bonds of Deputies**

In precincts located in counties having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred twenty thousand (320,000) inhabitants according to the last preceding or any future Federal Census, where a Public Weigher is elected by the people in any last election held for that purpose, no Public Weigher shall be appointed to perform the same or similar services and the authority now vested in the Governor, the Commissioner of Agriculture and the Commissioners' Courts to so appoint or authorize other persons to perform the same duties, or similar duties as elected Public Weighers is hereby repealed only to the extent of its conflict with this Act. The elected Public Weigher in such counties shall have authority to appoint a sufficient number of deputies to conveniently serve the public need; and such deputies, before taking the oath of office, shall be required to give a bond approved by the Commissioners' Court of the county where appointed to serve as a deputy, in the sum of One Thousand (\$1,000.00) Dollars conditioned as provided in the bond required to be given by the elected Public Weigher, as to liability.

[Acts 1939, 46th Leg., Spec.Laws, p. 854, § 1.]

**CHAPTER SEVEN. WEIGHTS AND MEASURES**

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**Art. 5705. Commissioner to Enforce Law**

The Commissioner of Markets and Warehouses<sup>1</sup> shall have power and authority to enforce, or cause to be enforced, any provision of this chapter. He shall appoint a chief deputy, who shall be known as Chief Deputy of Weights and Measures. In the absence or inability of the Commissioner, such deputy may perform any duty required by the provisions of this chapter. The Commissioner shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may also designate such inspectors, lecturers, or employés, serving under him as Commissioner, as sealers of weights and measures.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5706. Expenses**

Such deputies, together with the chief deputy and the Commissioner,<sup>1</sup> shall be entitled to their actual traveling expenses when traveling on business for the State, and the Legislature shall provide from time to time by appropriation other estimated expenses to fully carry out the provisions of this chapter.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5707. Duty of Commissioner**

The Commissioner<sup>1</sup> shall investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, food stuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The Commissioner shall annually report to the Gov-

ernor, and shall, prior to each regular session of the Legislature, file a copy of such report made by him to the Governor, together with his recommendations, with the Legislature of the State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5707a. Water, Gas and Electric Meters

All water meters, gas meters and electric meters are subject at all times to inspection of the Commissioner of Agriculture and said Commissioner either on his own motion or complaint of any user of any of the above named meters, shall have same inspected as to its correctness, and if found incorrect to discontinue its use until corrected, so that it will register correctly and whoever refuses to discontinue such meter when so notified by said Commissioner that it is incorrect or when so ordered to discontinue such meter should fail or refuse to comply with such order of said Commissioner shall be fined not less than twenty-five nor more than one hundred dollars and each day he shall fail or refuse to comply with such order to discontinue same shall be a separate offense.

[1925 P.C.]

#### Art. 5708. Rules and Regulations

The Commissioner<sup>1</sup> shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may see proper in order to carry out the purposes of this chapter. All such rules and regulations so issued by him shall have the same force and effect as if they were enacted into law.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5708a. County Sealers in Certain Counties; Deputies

Sec. 1. The Commissioners Court in each county having a population of not less than sixty-nine thousand, four hundred (69,400) and not more than seventy thousand (70,000), according to the last or any succeeding United States Census, may in its discretion appoint a county sealer of weights and measures. He shall be paid a salary to be determined by said Court, said salary not to be less than Fifteen Hundred Dollars (\$1500) a year, and no fee shall be charged by him or by the county for the inspecting, testing, or sealing or the repairing or adjusting of any weights, measures, or weighing or measuring devices. Whenever the Court shall deem it necessary, one or more deputy sealers of weights and measures may be appointed to hold office under the same conditions as those specified for the sealer of weights and measures, and the salaries of such deputies shall be fixed as in the case of the sealer of weights and measures. All deputies

appointed shall have the same powers and may perform the same duties as the county sealer, when acting under his instructions and at his direction. Provided that the appointments of all county sealers and deputy sealers being made under the provisions of this Chapter shall be subject to the approval of the Commissioner of Agriculture.

Sec. 2. All county sealers appointed under the terms of this Act shall have the same power, authority, duties, and responsibilities as are conferred upon all State and local sealers, in the performance of their official duties by the laws of this State. The jurisdiction of all county sealers and deputy sealers appointed by the Commissioners Court of any county in this State shall be coextensive with the limits of said county.

Sec. 3. Nothing in this Act shall be construed to prevent two (2) or more counties, or a county and a city situated therein, from combining the whole or any part of their districts, as may be agreed upon by the Commissioners Courts of the counties, or such Court of the county and the Mayor and the Common Council of the city, with one set of standards and one sealer, upon the written consent of the Commissioner of Agriculture. A sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the authorities who are parties to the agreement.

[Acts 1941, 47th Leg., p. 1319, ch. 592, § 1.]

#### Art. 5709. Jurisdiction

The jurisdiction of all State sealers, deputy sealers and inspectors appointed by the Commissioner<sup>1</sup> shall be co-extensive with the limits of the State and they shall have a right to inspect weights and measures in any and all districts or localities designated by the Commissioner. The jurisdiction of all local sealers of weights and measures appointed by the governing body of any city in this State shall be co-extensive with the limits of said city.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5710. Same Power as Peace Officer

The Commissioner,<sup>1</sup> his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5711. Record of Acts and Reports

The Commissioner<sup>1</sup> shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of any provision of this chapter. He shall keep

an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. [Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5712. Test of Standard

The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the bureau of standards, shall be the State's standards by which all State and municipal standards of weights and measures shall be tried, authenticated, proved and sealed.

[Acts 1925, S.B. 84.]

#### Art. 5713. To Keep and Maintain Standards

The standards referred to in the preceding article shall be kept by the Commissioner<sup>1</sup> in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5714. Commissioner Shall Establish Tolerances; Penalty

The Commissioner shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in this State, similar to the tolerances and specifications recommended by the National Bureau of Standards and he may establish a standard net weight or net count of any commodity, product, or article, and prescribe such tolerance for same as he may in his best judgment deem necessary for the proper protection of the public. Provided, the specifications and tolerances issued by the Commissioner of Agriculture for weighing and measuring devices in conformity with this Article, or any specifications or tolerances issued to protect the public from fraud, shall have the same force and effect as if enacted into Law, and provided, further, any person, firm, or corporation who shall fail or refuse to comply with said specifications and

tolerances shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Ten (\$10.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 125, ch. 83, § 1.]

#### Art. 5714a. County Sealer; Deputies; Combining Districts

(1) The Commissioners Court in each county in Texas may in its discretion appoint a county sealer of weights and measures. He shall be paid a salary to be determined by said Court and no fee shall be charged by him or by the county for the inspecting, testing, or sealing or the repairing or adjusting of any weights, measures, or weighing or measuring devices. Whenever the Court shall deem it necessary, one or more deputy sealers of weights and measures may be appointed to hold office under the same conditions as those specified for the sealer of weights and measures, and the salaries of such deputies shall be fixed as in the case of the sealer of weights and measures. All deputies appointed shall have the same powers and may perform the same duties as the county sealer, when acting under his instructions and at his direction.

(2) All county sealers appointed under the terms of this Act shall have the same power, authority, duties and responsibilities as are conferred upon all State and local sealers, in the performance of their official duties by the laws of this State. The jurisdiction of all county sealers and deputy sealers appointed by the Commissioners Court of any county in this State shall be co-extensive with the limits of said county.

(3) Nothing in this Act shall be construed to prevent two (2) or more counties or a county and a city or cities situated therein, from combining the whole or any part of their districts, as may be agreed upon by the Commissioners Courts of the counties, or such Court of the county and the mayor and the common council of the city or cities, with one set of standards and one sealer. A sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction and duties as if he had been appointed by each of the authorities who are parties to the agreement.

[Acts 1945, 49th Leg., p. 261, ch. 193, § 1.]

#### Art. 5715. Copies to Cities

The Commissioner<sup>1</sup> shall, at the request of any city council, town council, city commission or any other such town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the State's standards of weights and measures procured for the use of any such city or town, to be used by the sealer of weights and measures for such city or town. All copies

furnished or copies tested and approved by the Commissioner shall be true and correct; shall be sealed and certified by the Commissioner and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the same may specify, subject, however, to the approval of the Commissioner.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5716. Correcting Standards of Cities

The Commissioner<sup>1</sup> shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5717. Sale of False Devices

The Commissioner<sup>1</sup> shall have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5718. Certified Standard

All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this law are prohibited from using for the purpose of comparison or verification in any official capacity any weights or measures, unless same have been certified to by the Commissioner.<sup>1</sup> All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this State shall be paid by such city or town for whom the comparison or test is made.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5719. Copies of Original Standard

In addition to the standards heretofore referred to, and required to be kept by the State, the State shall also have a complete set of copies of such original standards of weights and measures adopted by this chapter, which shall be used for adjusting municipal standards by the Commissioner<sup>1</sup> or his deputy in the per-

formance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the Commissioner when the same are necessary for use by any State sealer of weights and measures, or deputy State sealer of weights and measures. In all instances where the State shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the State for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5720. Tests for State Institutions

The Commissioner<sup>1</sup> or his deputy shall at least once annually, or oftener if requested so to do by the Board of Control, or board of supervisors, regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the State, test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the Chairman of the Board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5721. Charges Against City Sealer

The Commissioner,<sup>1</sup> if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this State, by virtue of the authority given them under the law, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the Commissioner and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent, he shall present to the governing body or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or governing body to hear and determine such accusation. Upon receipt of such charge and accusation, such officer or city commission with whom the same has been filed, shall make an order setting the same for a hearing at a time which shall be not less than ten nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together

with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel and to produce evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office or adjudged to be incompetent to perform the duties of the office, the officer or governing body before whom such hearing is had must forthwith remove him from office. Whenever it shall become known to the Commissioner or his deputy that any local sealer of weights and measures for any city or town in this State, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring false weights and measures, as soon as such fact shall become known, or be made known to the officer or governing body employing such sealer or deputy sealer, he or they shall immediately suspend such sealer from office.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5722. To Supervise Local Sealers

Every local sealer of weights and measures, or deputy sealer, appointed by any governing body of any town or city shall be under the supervision of the Commissioner,<sup>1</sup> and shall be required to report to him regularly and carry out all the instructions of the Commissioner. Failure or refusal to do so shall be grounds for dismissal from the service.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5722a. To Supervise Local Sealers; Penalty

Each local or deputy sealer of weights and measures appointed by any city or town council or commission, shall be under the supervision of the Commissioner of Agriculture and shall be required to report to him regularly and carry out all his instructions, and on failure or refusal to do so shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

#### Art. 5723. Duty of Sealer and Inspector

Each sealer of weights and measures, deputy sealer, inspector, or local sealer shall carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the name and post-office address of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular

intervals to the Commissioner<sup>1</sup> when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the Commissioner.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5724. Sealing and Marking

Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State, shall cause the same to be sealed and marked by the sealer of weights and measures as to their correctness, and no instrument shall be sold for the purpose of weighing or measuring unless it shall bear the seal of the inspector of weights and measures as to its correctness.

[Acts 1925, S.B. 84.]

#### Art. 5725. Subject to Inspection

When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this chapter, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments of measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this chapter, but all such weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring; also all tools and appliances necessary connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this chapter, or by the National Bureau of Standards. Any scale, beam or mechanical device for weighing or measuring, which, after being sold, and before being used for weighing and measuring, is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring, without the consent of

the Commissioner,<sup>1</sup> must be tested and sealed as provided in this chapter.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5726. Testing Weights and Devices

All sealers, deputy sealers, inspectors, and local sealers shall inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award, and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the Commissioner,<sup>1</sup> see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer, or deputy sealer, or inspector for the purposes above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5726a. False Weights and Measures; Penalties

Any person who, by himself or by his servant or agent, or as the servant or agent of another person, shall offer or expose for sale, sell, use in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any charge for services ren-

dered on the basis of weight or measure, or in the determination of weight or measure when a charge is made for such determination, or retain in his possession, a false weight or measure or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed by the Commissioner, or his deputy, or inspectors, or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law; or who shall sell or offer or expose for sale less than the quantity he represents of any commodity, thing, or service, or shall take or attempt to take more than the quantity he represents, when, as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of any commodity, thing, or service is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than Twenty Dollars (\$20) nor more than One Hundred Dollars (\$100), upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

Sec. A. The word "person" as used in this Chapter shall be construed to include any individual and all officers, directors, managers, employees, and other agents of all corporations, companies, partnerships, societies and associations, and such is the legislative intent.

The words "weights, measures or (and) weighing or (and) measuring devices" as used in this Chapter, shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

The words "sell" or "sale" as used in this Chapter, shall be construed to include barter and exchange.

The term "false weight or measure, or (and) weighing or measuring device" as used in this Chapter, shall be construed to mean any weight or measure or weighing or measuring device which does not conform as closely as practicable to the official standards, which is not accurate, which is of such construction that it is not reasonably permanent in its adjustment or will not correctly repeat its indications, which facilitates the perpetration of fraud, or which does not conform to the requirements of the Statutes of this State and to the specifications and tolerances promulgated by the Commissioner under authority of Article 5714, Chapter

7, Title 93, of the Revised Civil Statutes of Texas of 1925, as amended.

Sec. B. It shall be unlawful to sell, except for immediate consumption on the premises, liquid commodities in any other manner than by liquid measure, or commodities not liquid in any other manner than by measure of length, by weight, or by numerical count. Provided, however, that liquid commodities may be sold by weight if there exists a general consumer usage to express the quantity of such commodities by weight and such expression gives accurate information as to the quantity thereof; and that nothing in this Section shall be construed to prevent the sale of fruits, vegetables, and other dry commodities in the standard barrel or by other methods provided for by State or Federal Law; or of berries and small fruits in boxes as provided for in the provisions of other Articles of the Statutes; or of vegetables or fruits usually sold by the head or bunch in this manner. Provided further, that nothing in this Section shall be construed to apply to commodities put up in original packages.

For the purposes of this Section the term "original package" shall be construed to include a commodity in a package, carton, case, can, barrel, bottle, box, phial, or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, which may be labeled, branded, or stenciled, or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The words "original package" shall be construed to include both the wholesale and the retail package.

For the purposes of this Section the term "commodities not liquid" shall be construed to include goods, wares, and merchandise which are not in liquid form and which have heretofore been sold by measure of length, by weight, by measure of capacity, or by numerical count, or which are susceptible of sale in any of these ways.

Sec. C. (1) It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form unless (a) the net quantity of contents, in terms of weight, measure, or numerical count, and (b) the name and place of business of the manufacturer, packer, or distributor shall be plainly and conspicuously marked on the outside of the package. Provided, however, that under Clause (a) of this Section reasonable variations or tolerances shall be permitted, and exemptions as to small packages shall be made; and that under Clause (b) of this Section exemptions as to packages sold on the premises where packed shall be made. And provided further, that this Section shall not be construed to apply to those commodities in package form, the manner of sale of which is specifically regulated by the provisions of other Articles of the Statutes, or to bales of cotton; and that reasonable rules and regulations for

the efficient enforcement of this Act, not inconsistent herewith, and including the reasonable variations or tolerances and the exemptions prescribed herein, shall be made by the Commissioner.

(2) It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents; or if the contents of its container fall below the standard of fill prescribed by regulations promulgated as provided in this Section. For the effectuation of the purposes of this Section the Commissioner is hereby authorized to promulgate regulations fixing and establishing for any commodity in package form a standard of fill of container, which in his best judgment is reasonable with respect to the physical characteristics of the commodity, the size, shape, and physical characteristics of the container, prevailing methods of handling and transportation of packages, and generally accepted good commercial practice in filling methods; provided, however, that reasonable variations or tolerances shall be permitted, and that these reasonable variations or tolerances shall be established by regulations made by the Commissioner.

(3) The words "in package form" as used in this Chapter, shall be construed to include a commodity in package, carton, case, can, box, bag, barrel, bottle, phial, or on a spool or similar holder, or in a container or band, or in a roll, ball, coil, skein, or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, or when put up prior to the order of the commodity, by the vendor, which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The words "in package form" shall be construed to include both the wholesale and the retail package. Provided, however, that a box or carton used for shipping purposes containing a number of packages which are individually marked, as hereinbefore provided, will not be required to bear the weight or measure of the contents thereof, nor the name and place of business of the manufacturer, packer or distributor. And provided further, that the words "in package form" shall not be construed to include paper stationery in tablet form.

Sec. D. It shall be unlawful for any person to keep for the purpose of sale, offer or expose for sale, or sell, any milk or cream in bottles or other containers of any capacity other than those provided for measures of capacity for liquid in Article 5732, Chapter 7, Title 93, of the Revised Civil Statutes of Texas of 1925, to wit, the gallon, a multiple of the gallon, one-half gallon, quart, pint, one-half pint, and gill.

Sec. E. It shall be unlawful for any person to keep for the purpose of sale, offer or expose for sale, or sell, except for immediate consumption on the premises, any cheese, meat, or meat food products otherwise than by standard net

weight. Provided, however, that any cheese, meat, or meat food products, in package form, shall comply with the requirements of Section C of this Article. For the purposes of this Section the following shall be deemed to be meat and meat food products: All fresh, cured, or salt meats, fish, poultry, sausage, chile, head cheese, souse meat, loaf meat, boneless meat, shredded meat, Hamburger meat, or any other manufactured, prepared, or processed meat or meat food products. This Section shall be construed to require that all poultry sold by live weight shall be weighed alive at the time of sale, and that any poultry dressed or killed prior to time of sale, whether cooked or uncooked, shall be sold by net weight at time of sale and not by live weight or by the piece; provided, however, that fresh-cooked poultry may be sold by the piece or by the head.

The word "poultry" as used in this Section shall be construed to include turkeys, chickens, ducks, geese, guineas, squabs, and all other domesticated fowls.

Sec. F. Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity, and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this Chapter, it shall be understood and construed to mean the net weight of the commodity. Provided, however, that this Section shall not be construed to apply to bales of cotton.

Sec. G. It shall be unlawful for any person to misrepresent the price of a commodity, thing, or service sold or offered or exposed for sale, or to represent the price or the quantity of any commodity, thing, or service sold or offered or exposed for sale in any manner calculated or tending to mislead or deceive an actual or prospective customer. Whenever any price sign, tag, card, poster, or other advertisement displaying the price of any commodity or thing, includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility with those of the whole number.

Sec. H. There shall be no violation under this Act for any discrepancy between actual weight or volume at the time of sale to the consumer and the weight marked on the container or between the fill of container and the capacity of the container if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste or to causes beyond the control of the seller acting in good faith.

Sec. I. Any person who shall violate any provisions of this Act, or any of the reasonable rules and regulations promulgated hereunder, for which a specific penalty has not been provided, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than Twenty Dollars (\$20) nor more than One Hundred Dollars (\$100) upon a first conviction in any court of competent jurisdiction; and upon

a second or subsequent conviction in any court of competent jurisdiction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

Sec. J. The Commissioner of Agriculture shall have the power to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any commodity, thing or item covered by the provisions of this Act, which the Commissioner of Agriculture has reason to believe is in violation of any of the provisions of this Act, prohibiting further sale of such commodity, item or thing until the Commissioner of Agriculture has evidence that the law has been complied with. Provided, however, in respect to the commodity, thing or item which has been denied sale as provided for in this Section, the owner or custodian of such commodity, thing or item shall have the right to appeal from such order to a court of competent jurisdiction where the commodity, thing or item is found, praying for a judgment as to the justification of said order and the discharge of such commodity, thing or item from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this Section shall not be construed as limiting the right of the Commissioner of Agriculture to proceed as authorized by other Sections of this Act.

Sec. K. The Commissioner of Agriculture is hereby authorized to promulgate rules and regulations for the purpose of carrying out the provisions of this Act and for the purpose of bringing about uniformity between the standards required pursuant to the provisions of this Act and those standards required pursuant to rules, regulations or statutes of the Federal Government.

[1925 P.C.; Acts 1929, 41st Leg., p. 676, ch. 303, § 1; Acts 1941, 47th Leg., p. 1374, ch. 624, § 1; Acts 1967, 60th Leg., p. 569, ch. 257, § 1, eff. May 23, 1967; Acts 1967, 60th Leg., p. 1014, ch. 444, §§ 1, 2, eff. June 12, 1967.]

Section 2 of the amendatory Act of 1941 read as follows: "If any Article, section, provision, subdivision, or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect."

Section 3 purported to repeal Acts 1923, 38th Leg., 3rd C.S., ch. 53, p. 121, and all conflicting laws and parts of laws. Reference to "3rd C.S." should probably be "2nd C.S." as there was no chapter 53 in the Second Called Session.

Acts 1967, 60th Leg., p. 569, ch. 257, § 2, repealed all conflicting laws and parts of laws.

#### Art. 5726b. Penalty for Hindering Sealers

Whoever hinders or obstructs in any way the Commissioner of Agriculture, or his deputy, inspector or sealer or any local sealer, in the performance of their duties, shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

#### Art. 5726c. Penalty for Refusing to Permit Weight or Measure Test

Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring

instrument of any kind, or appliances and accessories connected with any of such instruments or measures which are in his possession or under his control to the Commissioner, his deputy, inspector or to any local inspector or sealer, for the purpose of allowing the same to be inspected and examined as provided for by law, shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

**Art. 5726d. Penalty for Refusing to Permit Test of Article**

Any person, who, by himself, or his employé or agent, or as the proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the Commissioner or to his deputy or to a sealer or his deputy or to an inspector or local sealer, for the purpose of allowing same to be tested and proved as to quantity contained therein, shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

**Art. 5727. Marking and Tagging**

Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond to the standards, he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair, but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out of Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this article provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the Commissioner<sup>1</sup> or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the Commissioner or his deputy or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument which had been found to be incorrect and marked as in this article, and until such weight, measure or weighing or measuring in-

strument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. When any weight, measure or weighing or measuring instrument has been repaired and corrected, and has been re-inspected and found correct by the sealer of weights and measures, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of same where upon inspection they were found to be correct.

[Acts 1925, S.B. 84.]

<sup>1</sup>Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5727a. Penalty for Removing Tag of Sealer**

Whoever removes or obliterates any tag or device placed by any authorized sealer, deputy sealer or inspector upon any weight or measure, or weighing or measuring instrument, shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

**Art. 5728. Fees; Failure or Refusal to Pay; Repairs; Testing Services; Penalty**

The Commissioner of Agriculture shall collect fees for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring whenever he is required to make such tests under the provisions of this Chapter. The fee for testing gasoline, kerosene and diesel fuel pumps not to exceed fifty cents (50¢) for each pump tested; the test certificate or seal shall be protected from weather and attached inside the glass cover, where applicable, of each gasoline, kerosene and diesel fuel pump; fee for testing scales up to nine hundred and ninety-nine (999) pounds not to exceed One Dollar (\$1) for each scale tested; fee for testing scales one thousand (1,000) pounds to one thousand four hundred and ninety-nine (1,499) pounds not to exceed Two Dollars and Fifty Cents (\$2.50) for each scale tested; fee for testing scales one thousand five hundred (1,500) pounds to four thousand nine hundred and ninety-nine (4,999) pounds not to exceed Five Dollars (\$5) for each scale tested; fee for testing scales four thousand nine hundred and ninety-nine (4,999) pounds and over not to exceed Ten Dollars (\$10) for each scale tested. The fee for testing butane and propane measuring devices not to exceed Five Dollars (\$5) for each measuring device tested. The fee for testing measuring devices located on raw milk storage tanks situated on farms up to two hundred (200) gallons not to exceed Five Dollars (\$5) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms two hundred and one (201) gallons to four hundred (400) gallons not to exceed Ten Dollars (\$10) for each tank tested; fee for testing measuring devices located on raw milk

storage tanks situated on farms four hundred and one (401) gallons to six hundred (600) gallons not to exceed Fifteen Dollars (\$15) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms six hundred and one (601) gallons and over not to exceed Twenty Dollars (\$20) for each tank tested. Such fees shall be collected by the Commissioner of Agriculture, his deputies and agents not to exceed once annually, except where additional tests are requested by the owner of the measuring or weighing device in which event there shall be paid to the Commissioner, his deputies and agents a fee equal to the annual fee for each additional test. The proceeds of such fees shall be paid into the State Treasury by the Commissioner of Agriculture and placed by the State Treasurer in the Special Department of Agriculture Fund, and shall be used only for administration and enforcement purposes of this Act. Provided, however, that no city which maintains a Weights and Measures Department for checking all weights and checking devices shall be precluded by this Act from operating such a Weights and Measures Department.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 765, ch. 320, § 1, eff. May 27, 1967.]

#### Art. 5729. Definitions

The word "person," whenever used in this chapter, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this chapter on behalf of their respective corporations.

[Acts 1925, S.B. 84.]

#### Art. 5730. Legal Standards

The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures, the standards adopted by this State shall be the standards of weights and measures for such commodities. The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this chapter, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one-third inches. Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty eight hundred and

forty square yards; six hundred and forty acres shall constitute a square mile.

[Acts 1925, S.B. 84.]

#### Art. 5731. Standard of Avoirdupois and Troy Weights

The units or standards of weight from which all the other weights shall be derived and ascertained shall be the standard of avoirdupois and troy weights designated in this chapter, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound.

[Acts 1925, S.B. 84.]

#### Art. 5732. Standard for Liquids; Liquid Measuring Device

The units or standards of measure of capacity for liquids from which all other measurements shall be derived and ascertained, shall be the standard gallon and its parts designated in this Chapter. The barrel shall constitute 31½ gallons and two barrels shall make a hoghead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints and half pints and gills. Provided, however, that a liquid measuring device which indicates fractional parts of a gallon shall indicate such fractional parts in terms of binary sub-multiple subdivisions or in terms of tenths of a gallon.

For the purposes of this Article, the term "liquid measuring device" shall be construed to mean a mechanism or machine adapted to measure and deliver liquid by volume.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 146, ch. 96, § 1.]

#### Art. 5733. Standard for Solids

The unit or standard measure of capacity for substance not liquids, from which all measures of such substance shall be derived and ascertained, is the standard half bushel mentioned in this chapter. The peck, half peck, quarter peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty-two one hundredths cubic inches; the standard half-bushel measure shall contain ten hundred seventy-five and twenty one-hundredths cubic inches; the standard gallon shall contain two hundred thirty-one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller.

[Acts 1925, S.B. 84.]

**Art. 5733a. Sale of Wheat and Other Flours or Corn Meal in Other Than Standard Packages; Penalty**

Sec. 1. The standard measures of wheat flour, whole wheat flour, graham flour, other cereal flour, and corn meal, except such cereals sold as grits, shall be packages containing net avoirdupois weights of two, five, ten, twenty-five, fifty, one hundred, one hundred fifty, and two hundred pounds.

Sec. 2. It shall be unlawful for any person, firm, association, or corporation to pack for sale, sell or offer for sale in the State of Texas any wheat flour, whole wheat flour, graham flour, other cereal flour, or corn meal except in packages (including barrels, sacks, bags, cartons and other containers) of the above standard net weights.

Sec. 3. Each package of wheat flour, whole wheat flour, graham flour, other cereal flour and corn meal shall have the net weight, the name and address of the manufacturer (meaning the person, firm, association, or corporation which processes the wheat or other cereal into flour or which processes the corn into meal) or packer, if such was not packed by the manufacturer, or the distributor, printed or plainly marked on it in letters and figures clearly readable; and that it shall be unlawful for any wheat flour, whole wheat flour, graham flour, other cereal flour or corn meal, to be packed for sale, offered for sale or sold within the State of Texas unless it shall be so labeled. If the name shown is not that of the actual manufacturer, it must be preceded by the words "Manufactured for and Packed by," "Distributed by," or other similar phrase. Provided, however, that reasonable rules and regulations for the efficient enforcement of this Act not inconsistent herewith and including reasonable variations or tolerances shall be made by the Commissioner of Agriculture.

Sec. 4. This Act does not apply to

(1) the retailing of wheat flour, whole wheat flour, graham flour, other cereal flour, or corn meal directly to the consumer from bulk stock;

(2) the sale of flour to a bakery for its exclusive use;

(3) the exchange of flour or meal for wheat or corn between a gristmill and another mill grinding for toll for producers;

(4) the packing for sale, offer for sale, or sale of a prepared flour or meal designed for a special or limited use and packed and distributed in an identified original package the net weight of which is five pounds or less.

Sec. 5. Any violation of this Act shall be a misdemeanor, and upon conviction the offender shall be fined not less than Twenty-five (\$25.00) Dollars nor more than One Hundred (\$100.00) Dollars for each offense.

[Acts 1943, 48th Leg., p. 694, ch. 385; Acts 1953, 53rd Leg., p. 831, ch. 334, § 1; Acts 1965, 59th Leg., p. 828, ch. 400, § 1, eff. June 9, 1965.]

Section 6 of the Act of 1943 read as follows: "House Bill No. 601, Chapter 237, Acts of the Regular Session of the 44th Legislature, and all other laws and parts of laws in conflict herewith, are hereby specifically repealed; provided that all persons, firms, associations or corporations having on hand at the time this Act goes into effect packages (including sacks, bags, cartons and other containers) of the sizes prescribed by House Bill No. 601, Chapter 237, Acts of the Regular Session of the 44th Legislature, shall, within ten days after said Act goes into effect, report to the Commissioner of Agriculture of the State of Texas under oath the exact number of such packages then on hand, and shall be permitted to pack for sale, sell, and offer for sale wheat flour, other cereal flour and corn meal in such packages so on hand and of the sizes prescribed by said Chapter 237, Regular Session of the 44th Legislature, and the use thereof until such packages shall be exhausted shall not be unlawful, nor in violation of the provisions of Section 1 of this Act; provided further, that if such packages are not used on or before January 1, 1944, the person, firm, association or corporation having such unused packages on hand shall furnish under oath within ten days from such date to the Commissioner of Agriculture of the State of Texas the number of packages still on hand, and the Commissioner of Agriculture shall grant such person, firm, association or corporation an additional six months from January 1, 1944, in which to use such packages."

**Art. 5734. Weights Per Bushel; Ton; Cord**

Wherever the articles hereinafter named shall be sold by the bushel, and no special agreement as to the measurement or weights thereof shall be made by the parties, the bushel shall consist of the following number of pounds: Barley, 48 pounds; shelled corn, 56 pounds; flax seed, 56 pounds; oats, 32 pounds; rye, 56 pounds; wheat, 60 pounds; cotton seed, 32 pounds.

The term "ton" shall be understood to mean a unit of 2,000 pounds avoirdupois weight. The term "cord" shall be understood to mean 128 cubic feet, or the contents of a space eight (8) feet long, four (4) feet wide, and four (4) feet high.

When the term "cord" is used in connection with wood intended for fuel purposes, it shall be understood to mean the amount of wood which is contained in a space of 128 cubic feet, when the wood is ranked and well stowed and one-half the kerf of the wood is included.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 531, ch. 256, § 1; Acts 1943, 48th Leg., p. 322, ch. 206, § 1.]

**Art. 5735. Repealed by Acts 1943, 48th Leg., p. 322, ch. 206, § 2**

**Art. 5736. This Law to Govern Contracts**

All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure, shall be construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard given in this chapter shall be taken as the guide for making such adjustment.

[Acts 1925, S.B. 84.]

**Art. 5736a. Babcock Test for Butter Fat; Other Milk Testing Apparatus; Approval**

The Babcock test is hereby adopted as the official dairy test for use in the State of Texas, to be used by every person, firm, association,

partnership, and/or corporation paying for milk or cream on the basis of the butterfat content of such commodity or commodities; in addition to the Babcock test, other milk testing apparatus to determine the butterfat or other component parts of milk may also be approved, if the Commissioner of Agriculture and the Dairy Advisory Board shall determine that other testing apparatus also meets specifications necessary to accurately determine the butterfat content or other component parts of milk, and the method of operating the test, or tests, shall comply in every detail with standard rules governing the Babcock or other butterfat or milk testing apparatus, and the Commissioner of Agriculture is hereby authorized to enforce the correct operation of the Babcock or other butterfat or milk test, or tests, and, after public hearing, to issue all rules and regulations necessary to enforce the provisions of this Act. The Commissioner of Agriculture and the Dairy Advisory Board shall approve milk testing apparatus on the basis of performance, accuracy and testing specifications, and is prohibited from officially approving any milk testing apparatus by brand, trade or manufacturer's name.

It is further provided that no milk testing apparatus shall be officially employed to determine butterfat content or other component parts of milk in the State of Texas until it has been approved by the Association of Official Analytical Chemists (AOAC).

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1; Acts 1971, 62nd Leg., p. 1215, ch. 296, § 1, eff. May 24, 1971.]

#### Art. 5736b. License for Testers

That it shall be unlawful for any person to operate a milk or cream testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing same, either for himself or another, or to collect milk from raw milk storage tanks and take samples for the purpose of milk or cream testing, without first securing a license from the State Commissioner of Agriculture. The Commissioner of Agriculture shall issue such license upon a form prepared by him and upon payment of a fee of Ten Dollars (\$10) for a period of twelve (12) months for each tester, and One Dollar (\$1) for a period of twelve (12) months for each contract milk hauler and said Commissioner or his agents are hereby authorized to make such investigations as he may deem necessary to determine whether the applicant for the position of tester or contract milk hauler is a reliable person and competent and qualified to operate and use such apparatus for either the purpose of making an accurate test, or for taking the sample. If the applicant is not found to be reliable, competent and qualified, the Commissioner of Agriculture may refuse to license him, and said Commissioner is hereby authorized and empowered to revoke the license of any person licensed to make the Babcock test of milk or cream under the laws of the State of Texas, or to revoke the license of

any person licensed to collect raw milk and take raw milk samples, who shall fail to fully comply with the provisions of said laws, or with any of the rules and regulations of the Department of Agriculture relating to said Babcock test. Said money for licenses shall be turned in by the Commissioner of Agriculture to the general revenue fund of the state. The testing of each lot of milk or cream or the collecting of said raw milk and securing sample of raw milk by any unlicensed person shall constitute a separate offense under this Act; provided that any licensed person or his employer may for a valid reason, which must in every instance be reported to the Commissioner of Agriculture, appoint a substitute for a period not to exceed fifteen (15) days, and provided further that such appointment may for a valid reason satisfactory to said Commissioner and subject to his approval, be extended for an additional ten (10) days. Any person violating the requirements of this Article shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Subsection (b), Article 5736c (Article 1057c, Vernon's Texas Penal Code).

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1; Acts 1967, 60th Leg., p. 766, ch. 320, § 1, eff. May 27, 1967.]

#### Art. 5736c. Inaccurate Samples or False Determinations by Babcock Test; Penalty

(a) It shall be unlawful for any person, either for himself or another or any person, firm, association, or corporation, either by himself or agent, to falsely manipulate or under-read or over-read, take inaccurate samples or make any false determinations by Babcock test or any other contrivance used to determine the quantity of fat in milk or cream or value of milk or cream delivered to a creamery, cheese factory, condensary, ice cream plant, milk plant or milk depot, or any other place where milk or cream is purchased, or when sold or purchased. The test shall be clear butterfat, free from sediments, solids and other foreign substance, and must be read at a temperature of 130°-140°. Cream tests must be weighed and must not be taken except from milk or cream which has been thoroughly mixed by stirring with an instrument suitable for that purpose. The scales must be accurate and sensitive to a weight of thirty (30) milligrams; the tester and owner or owners are jointly responsible for their accuracy. For the purpose of providing official supervision of the operation of the Babcock test in all creameries, cheese factories, condensaries, ice cream plants and milk depots using said test, and all receiving stations conducted for the purchase of butterfat either in the form of cream or milk, the following regulations are hereby promulgated:

(1) That all individuals, corporations and partnerships authorized by license or permit to conduct the Babcock test in the State of Texas shall retain in a cool, clean, sanitary place and in tightly stopped bottles or tightly covered jars the exact, prop-

erly labeled samples of cream or milk from which the butterfat test has been conducted, until 6 P.M. of the next test day;

(2) upon such occasions as may be determined wise, the Agricultural Department or its inspectors may order any sample or samples held for a longer period than provided for by these regulations.

(b) Any person violating the provisions of these Articles shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand (\$1,000.00) Dollars and upon the second offense, the Commissioner of Agriculture may revoke for six (6) months the license of any person licensed to make the Babcock test of milk or cream.

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1; Acts 1943, 48th Leg., p. 174, ch. 99, § 1.]

#### Art. 5736d. Entry on Premises for Samples for Tests: Standard Weights and Measures from United States

In addition to the rights and powers given to the Commissioner of Agriculture and his inspectors and agents by the provisions of Chapter 7, Title No. 93, of the Revised Civil Statutes of 1925, as amended by Acts of the Regular Session of the 41st Legislature, the said Commissioner, his inspectors and agents, are hereby authorized to enter any creamery, cheese factory, building, premises or place where milk, cream and dairy products are handled for the purpose of securing samples and/or checking tests on same, and except as herein provided, all of the provisions of said Chapter and Title shall apply to the purchase of cream, milk and butter fat in this state, and particularly as pertains to the standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and particularly such new weights and measures as shall be received from the United States or which have been received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be procured by the state in conformity therewith and certified by the Bureau of Standards. The Commissioner of Agriculture or his authorized agents shall have the right to sample, inspect, make analysis of, and test all milk and milk products transported, sold, offered or exposed for sale within this state, at such time and place, and to such extent as he may deem necessary to determine whether said milk or milk products are in compliance with the provisions of this Act, and to notify promptly the person who transported, sold, offered, or exposed the milk or milk products for sale, of any violation; and to provide rules and regulations governing the methods of sampling and inspecting and analyzing said milk or milk products and the tolerances to be allowed in the administration of this Act. The Commissioner or his agents are authorized to enter upon any public or private

premises, during regular business hours in order to have access to the milk or milk products subject to the Act and the rules and regulations thereunder. The Commissioner of Agriculture individually or through his authorized agents is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of milk or milk products which the Commissioner of Agriculture has reason to believe is in violation of any of the provisions of this Act which shall prohibit the further sale of such milk or milk products until such officer has evidence that the law has been complied with. Provided that in respect to milk or milk products which have been denied sale as provided in this paragraph, the owner or custodian of such milk or milk products shall have the right to appeal from such order to a court of competent jurisdiction where the milk or milk products are found, praying for a judgment as to the justification of said order and for the discharge of such milk or milk products from the order prohibiting the sale in accordance with the findings of the court; and provided further that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by the Sections of this Act.

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1; Acts 1967, 60th Leg., p. 766, ch. 320, § 1, eff. May: 27, 1967.]

#### Art. 5736e. Units or Standards of Measure for Use in Babcock Test

The units or standards of measure of capacity for use in the Babcock test shall be the true cubic centimeter, or the weight of one (1) gram of distilled water, at four (4) degrees Centigrade, and all other units and weights shall be in conformity with the standards prescribed by the United States Bureau of Standards, as aforesaid. The said Commissioner of Agriculture shall from time to time make tests of individual bottles and pipettes used by various persons, firms and corporations in the State in order to ascertain whether the above provisions are being complied with, and shall report any violations found to the Attorney General, County or District Attorney in the county where such alleged violation occurs. All glassware and/or measuring devices found not to be standard in capacity shall be seized and destroyed by the Commissioner of Agriculture or his authorized agents.

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

#### Art. 5736f. Duties of District or County Attorney

It shall be the duty of the District or County Attorney of any county in which the provisions of this Act may be violated to make due investigation and prosecute in the Court having jurisdiction of the offense all persons guilty of such violations, and if necessary to file suits to enjoin further violations of this Act.

[Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

**Art. 5736g. Dairy Advisory Board on Milk Testing Apparatus; Public Hearings; Notice; Action by Commissioner; Emergencies; Appeal**

Sec. 1. [Amends art. 5736a].

Sec. 2. (a) There is hereby created a Dairy Advisory Board for the purpose of advising with the Texas Commissioner of Agriculture in the conducting of public hearings for the purpose of determining the type of dairy testing apparatus to be used in the State of Texas that may be used to determine butterfat content and/or component parts of milk.

(b) The Advisory Board shall consist of three (3) members as follows: One (1) member shall represent the dairy processing industries; one (1) member shall represent the dairy production industry; and one (1) member shall represent consumers.

(c) The Advisory Board members shall be appointed for two (2) year periods with the effective date of the first appointments to commence January 1, 1972 and extend through December 31, 1974. Advisory Board members shall be appointed by the Governor with the advice and consent of the Senate.

(d) Frequency of public hearings shall be determined by the Commissioner of Agriculture with the approval of a majority of the Advisory Board members.

Sec. 3. (a) At all hearings before the Texas Commissioner of Agriculture and the Dairy Advisory Board, parties in interest shall have the right to appear in person and by counsel, and to present oral and written evidence. If requested by a party in interest, a record shall be made of all evidence offered by such party and all other evidence considered by the Commissioner of Agriculture and the Dairy Advisory Board. The Commissioner of Agriculture shall swear witnesses and take their testimony under oath.

(b) Prior to the approval, modification or rejection of any milk testing apparatus to be used in Texas to determine the butterfat or other component parts of milk the Commissioner of Agriculture and the Dairy Advisory Board shall give at least thirty (30) days notice of its intended action. The notice shall include a statement of the nature or purpose of the hearing, as well as, the time and place of the hearing. The notice shall be published not less than thirty (30) nor more than sixty (60) days prior to such intended action in a newspaper of general circulation in Travis County and in each of the five (5) most populous counties in Texas, according to the latest U.S. Census. In addition, the notice is to be mailed to all persons who have made timely written requests of the Commissioner of Agriculture for advance notice of such hearings.

(c) Any action taken by the Commissioner of Agriculture and the Dairy Advisory Board shall not become effective before ninety (90) days following such hearing and adoption.

(d) If the Commissioner of Agriculture and the Dairy Advisory Board find that an imminent peril to the public health, safety or welfare requires adoption, modification or rejection of any milk testing apparatus to be used in Texas to determine butterfat or other component parts of milk, upon fewer days than thirty (30) days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon abbreviated notice and hearing that it finds practical, to take emergency action. Such emergency action may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding sixty (60) days.

(e) Any party in interest aggrieved by any order, ruling or decision of the Texas Commissioner of Agriculture and the Dairy Advisory Board may within thirty (30) days after the date of entry, file in the District Court of Travis County, Texas, a petition against the Texas Commissioner of Agriculture and the Dairy Advisory Board officially as defendant, alleging therein, in brief detail, the order, ruling or decision complained of in praying for a reversal or modification thereof.

Sec. 4. It is the express intent of this legislation that the Dairy Advisory Board serve in an advisory capacity only.

[Acts 1971, 62nd Leg., p. 1215, ch. 296, §§ 2 to 4, eff. May 24, 1971.]

**Art. 5736-1. Parties May Contract**

The preceding article<sup>1</sup> does not apply where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such article.

[1925 P.C.]

<sup>1</sup> Penal Code, Art. 1042 (repealed).

This article was probably impliedly repealed when Penal Code, art. 1042, to which it is an exception was repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), adopting the new Penal Code.

**CHAPTER EIGHT. MARKETING ASSOCIATIONS**

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## Article

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**Art. 5737. Declaration of Policy**

In order to promote, foster and encourage the intelligent and orderly production, cultivation and care of citrus groves and marketing through cooperation and to eliminate speculation and waste; and to make production and distribution of agricultural products as direct as can be effectively done between the producer and consumer; and to stabilize the production and marketing problems of agricultural products, this law is passed.

[Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 601, ch. 346, § 1.]

**Art. 5738. Definitions**

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee, and any farm and ranch products;

(b) the term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) the term "association" means any corporation organized under this Act or any association organized under the co-operative marketing acts of any other State of the United States; provided, such foreign association is composed of persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers, acting together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons, so engaged; provided, further, that such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

(1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

(2) That the association does not pay dividends on stock or membership capital in excess of eight per centum per annum, and in any case to the following:

(3) That any association shall be permitted to deal in the products of non-members to an amount not greater in value than such as are handled by it for its members; and

(d) the term "person" shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder

shall be deemed non-profit, inasmuch as they are organized not to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This Act shall be referred to as the "Co-operative Marketing Act."

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 1; Acts 1930, 41st Leg., 5th C.S., p. 145, ch. 20, § 1.]

**Art. 5739. Who May Organize**

Five or more persons engaged in the production of agricultural products or three or more associations may form a non-profit co-operative association with or without capital stock, under the provisions of this chapter.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 2.]

**Art. 5740. Purposes**

An Association may be organized to engage in any activity in connection with the production, cultivation and care of citrus groves or the marketing or selling of agricultural products and citrus fruits produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. Provided, however, any such activities may extend to non-members and to the production, cultivation and care of lands owned or cultivated by them and their products limited by Article 5738 as heretofore amended.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1; Acts 1943, 48th Leg., p. 601, ch. 346, § 2.]

**Art. 5741. Preliminary Investigation**

Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the Commissioner of Markets and Warehouses,<sup>1</sup> who will inform it, whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates, regarding probable success.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

**Art. 5742. Powers**

Each association incorporated under this Chapter shall have the following powers:

(a) To engage in any activity in connection with the production, cultivation and care of citrus groves and the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products there-

of; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Article.

(b) To borrow money and make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere.

(h) To extend its activities to the products and supplies of non-members to an amount not greater in value than such as are handled by it for its members.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 3; Acts 1930, 41st Leg., 5th C.S., p. 145, ch. 20, § 2; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1; Acts 1943, 48th Leg., p. 601, ch. 346, § 3.]

#### Art. 5742-A. Powers Conferred on Farmer's Co-operative Societies as Organized

All the power and authority authorized or given in Article 5742 is hereby conferred and given to Farmer's Co-operative Societies now organized, or may be hereafter organized, un-

der Chapter 5 of Title 46, of the Revised Civil Statutes of 1925, including the power to organize, own stock in, manage and control a joint agency or corporation for the accomplishment of the purpose for which they are incorporated. [Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 3.]

#### Art. 5743. Members.

(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a non-stock association be other than a natural person, such member may be presented by any individual, associate officer or member thereof, duly authorized in writing.

(c) Any association as defined in Article 5738(c) may become a member or stockholder of any other association or associations organized hereunder.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 4.]

#### Art. 5744. Articles of Incorporation

Each Association formed under this Act must prepare and file Articles of Incorporation, setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the Articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the Articles of Incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common

stock. If so divided, the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preferences and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said Articles of Incorporation, or certified copies thereof, shall be received in all courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the Articles of Incorporation shall also be filed with the Commissioner of Markets and Warehouses;<sup>1</sup> provided, however, no part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such Articles of Incorporation; provided further that such associations may, from time to time, sell and issue to their members or stockholders, shares of capital stock in such manner and upon such terms and conditions as shall be provided in their By-Laws; and provided further, however, that no such shares of capital stock shall be sold and issued to any one not a member or stockholder of such association without first complying with the Blue Sky Laws of Texas.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1.

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5745. Amendments to Articles of Incorporation

The Articles of Incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the Association. Amendments to the Articles of Incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State.

[Acts 1925, S.B. 84.]

#### Art. 5746. By-laws

Each association incorporated under this Act must, within thirty days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this law. A majority vote of the members or stockholders, or their assent, is necessary to adopt such by-laws. Each association, under its by-laws may also provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting its meetings.

(b) The number of stockholders or members constituting a quorum.

(c) The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.

(f) Penalties for violations of the by-laws.

(g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they must be used.

(h) The amount which each member or stockholders (stockholder) shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to members of ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease.

The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 5.]

**Art. 5747. General and Special Meetings**

In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting. The by-laws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association. [Acts 1925, S.B. 84.]

**Art. 5748. Directors—Election**

The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. Any association which is a member or stockholder may designate any of its members or stockholders to cast its vote as prescribed by the by-laws of the association holding the meeting and any member or stockholder so designated may be considered as a member or stockholder of the association holding the meeting, for the purpose of election or service as director thereof.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 6.]

**Art. 5749. Election of Officers**

The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

[Acts 1925, S.B. 84.]

**Art. 5750. Stock—Membership Certificates**

When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, includ-

ing any unpaid balance on any promissory notes given in payment thereof. No stockholder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock. No member or stockholder shall be entitled to more than one vote. Any association organized with stock, under this law may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retireable by the association on such terms and conditions as may be provided for by the Articles of Incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The association may at any time except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

[Acts 1925, S.B. 84.]

**Art. 5751. Removal of Officer or Director**

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity. In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

[Acts 1925, S.B. 84.]

**Art. 5752. Referendum**

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stock-

holders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

[Acts 1925, S.B. 84.]

#### Art. 5753. Marketing Contract

The association and its members may make and execute marketing contracts, requiring the members to sell, for a period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any, and other proper reserves; and interest not exceeding eight per cent per annum upon common stock. The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State. In the event of any breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

[Acts 1925, S.B. 84.]

#### Art. 5754. Purchasing Business of Others

Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquiring interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

[Acts 1925, S.B. 84.]

#### Art. 5755. Annual Reports

Each association formed under this Act shall prepare and make out an annual report on

forms furnished by the Commissioner of Markets and Warehouses,<sup>1</sup> containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

#### Art. 5756. Conflicting Laws Not to Apply

Any provision of law which is in conflict with this chapter shall not be construed as applying to the associations herein provided for.

[Acts 1925, S.B. 84.]

#### Art. 5757. Bond

Each and all officers, employees and agents, handling funds or property of the corporation created under the provisions of this Act, or any property or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the By-Laws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Act, shall fail to have all officers, employees and agents handling such funds or property, execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure, and which might have been recovered on said bond.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1.]

#### Art. 5758. Interest in Other Corporations or Associations

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipts shall not

be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

[Acts 1925, S.B. 84.]

#### Art. 5759. Contracts and Agreement With Other Associations

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or any other State for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

[Acts 1925, S.B. 84.]

#### Art. 5760. Associations Heretofore Organized

Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of Incorporation shall be filed as required in the eighth article of this chapter, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to Articles of Incorporation.

[Acts 1925, S.B. 84.]

#### Art. 5761. Breach of Contract or False Reports

Any person or persons or any corporation whose officers or employes knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spread false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense.

[Acts 1925, S.B. 84.]

#### Art. 5762. Associations Not in Restraint of Trade

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily;

nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this chapter, be considered illegal or in restraint of trade.

[Acts 1925, S.B. 84.]

#### Art. 5763. Application of General Laws, etc.

The provisions of the general corporation laws of this State, and all powers and rights thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this chapter. Provided, however, that any co-operative marketing association incorporated under the laws of any other State may apply for and be granted a permit to do business in this State and pay the same filing fee as required of domestic corporations organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 7.]

#### Art. 5764. Fees

Each association organized hereunder shall pay to the Commissioner<sup>1</sup> an annual license fee of ten dollars but shall be exempt from all franchise or license taxes. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents.

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished and functions and duties vested in Commissioner of Agriculture. See Acts 1925, 39th Leg., p. 35, ch. 13, following art. 5611.

### CHAPTER NINE. MARKETING AGREEMENTS

#### Art. 5764a. Citrus Marketing Act

##### Purpose of Act

Sec. 1. The unreasonable waste and inefficient use of the citrus resources, occasioned by the marketing within the State of Texas of greater quantities of fresh citrus fruits than are reasonably necessary to supply the demands of the market, are opposed to public interest. The difficulty inherent in any attempt of individuals to correlate within a reasonable degree the citrus production current demand creates chaotic economic conditions in the citrus areas of the State as defined in this Act of such severity as to imperil the ability of citrus producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase, and increasing the tax burdens of other taxpayers for the same purposes, and is rendering it impossible for producers to be reasonably assured of adequate standard of living for themselves and their families. In the interest of the public welfare and general prosperity of the State, the unreasonable waste and inefficient use of citrus resources involved in the

marketing in this State of citrus fruits should be eliminated, while at the same time preserving to citrus producers of the areas covered by this Act an equality of opportunity.

#### Definitions

Sec. 2. As used in this Act, the following terms shall mean:

(a). "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(b). "Person" means individual, partnership, corporation, association, and/or any other business unit.

(c). "Producer" means any person engaged in the production of citrus fruits in the State of Texas for commercial purposes, or who is a substantial stockholder in a corporation engaged in the production of citrus fruits in the State of Texas for commercial purposes.

(d). "Handler" means any person who packs or ships citrus fruits, or causes citrus fruits to be packed or shipped in the current of intrastate commerce so as not to directly burden, obstruct, or affect interstate and/or foreign commerce.

(e). "Ship" means to convey citrus fruits, or cause citrus fruits to be conveyed, in the current of intrastate commerce, by rail, boat, truck, or any other means whatsoever (except by express or parcel post), whether as owner, agent, or otherwise.

(f). "Shipment" shall be deemed to take place when citrus fruits; or citrus fruit, is loaded into a car, or any other conveyance for transportation in the current of intrastate commerce.

(g). "Citrus fruits" or "citrus fruit" means grapefruit, oranges, and tangerines grown in the area of Texas covered by this Act.

(h). "Variety" or "varieties" as used in this Act means classifications or groups in the case of oranges as follows:

(a) early season oranges, and

(b) valencias, including all varieties of valencias and Lou Gim Gongs; in the case of grapefruit as follows:

(a) Marsh and other seedless varieties except pinks,

(b) Duncan and other seeded varieties except pinks,

(c) pinks of the seeded type, and

(d) pinks of the seedless type.

All tangerines and temple oranges are grouped together as one variety.

(i). "Intrastate commerce," as used in this Act, means all commerce other than that which is in the current of interstate or foreign commerce, or which directly burdens, affects, or obstructs interstate or foreign commerce.

(j). "Standard packed box" as used in this Act means a unit of measure equivalent to one and three-fifths ( $1\frac{3}{5}$ ) U.S. bushels of citrus fruit, irrespective of the container in which same is held.

#### Marketing Agreements and Licenses as to Intrastate Transactions

Sec. 3. Subject to the provisions of this Act, the Commissioner is hereby authorized and empowered to execute marketing agreements and to issue licenses under this Act to persons engaged in transactions of intrastate commerce within the areas of this State in the marketing, processing, packing, shipping, handling, or distribution of citrus fruits.

#### Notice of Hearing; Procedure

Sec. 4. Whenever the Commissioner has reason to believe that the execution of a marketing agreement or the issuance of a license, or both, will tend to effectuate the declared policy of this Act with respect to citrus fruits, he shall, either upon his own motion, or upon application of any producer or handler of such commodity give due notice of, and an opportunity for hearing upon a proposed marketing agreement or license, or both. Such notice shall be given by posting at the office of the Commissioner at Austin, and by mailing a copy of such notice to the last known address of all known handlers affected by such agreement or license whose names appear upon the most recent lists in the office of the Commissioner. Such notice shall also be mailed to any such person who shall have filed with the Commissioner a request for such notice.

Such hearing shall be held within the citrus area of the State of Texas as defined in this Act. At said hearing the Commissioner shall receive and hear the evidence offered by any interested person in support of, or in opposition to, the issuance of such marketing agreement or license. All evidence and exhibits used by the Commissioner or introduced at such hearing shall, within a reasonable time after being so used or so introduced, be available at a central point to all interested parties. Such hearings may be adjourned from time to time and from place to place in the discretion of the Commissioner. A transcript of the proceedings at such hearings shall be made by the Commissioner and shall be open for inspection by any interested party.

#### Findings of Fact Prerequisite to Marketing Agreement or License

Sec. 5. If upon such hearing it shall be found by the Commissioner that the following facts actually exist:

1. The supply of citrus fruits available for marketing exceeds or is likely to exceed the demand therefor at prices which will provide a reasonable return to representative producers of such citrus fruits;

2. The return to producers of such citrus fruits will tend to be increased

through the operation of the marketing plan;

3. The marketing plan may be operated without permitting unreasonable profits to producers of such citrus fruits and without unreasonably enhancing prices of such citrus fruits to consumers;

4. The plan will tend to advance public welfare and conserve the agricultural wealth of the State by preventing threatened economic or agricultural waste; and will tend to prevent disorderly marketing of citrus fruits;

he shall make written findings to that effect and shall enter into a marketing agreement or agreements and issue licenses, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he shall not issue such marketing agreement or license.

#### Findings, Matters Considered in Making

Sec. 6. The Commissioner shall base the findings required by Section 5 hereof upon such of the following matters as shall be relevant, and in the administration of such marketing agreement or license, when and if issued, shall take the same into consideration:

(a) The quantity of the several grades, varieties and qualities of the particular citrus fruits under consideration and available for distribution to consumers in the marketing season or seasons during which the proposed program is to be effective.

(b) The quantity of the various grades, varieties and quality of such citrus fruits required by consumers during the marketing season or seasons during which the proposed program is to be effective.

(c) The cost of production of such citrus fruits.

(d) The general purchasing power of consumers thereof.

(e) The general level of prices of commodities which farmers buy.

(f) The general level of prices of other commodities which compete with or are used as substitutes for such citrus fruits.

(g) Any other relevant evidence.

#### Terms and Conditions of Agreements or Licenses

Sec. 7. Marketing agreements executed and licenses issued pursuant to this Act shall contain one or more of the following terms and conditions and no others, except as provided in Section 6 of this Act:

(1) Limiting, or providing methods for the limitation of the total quantity of any variety of citrus fruit, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in, or transported to, any or all markets in intrastate commerce.

(2) Allotting, or providing methods for allotting, the amount of citrus fruits, or any grade, variety, size, or quality thereof, which each handler may market in or transport to any or all markets other than in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such citrus fruits, under a uniform rule based upon (1) the amounts of such citrus fruits, or any grade, variety, size, or quality thereof, which each such handler has available for current shipment, or (2) upon the amounts shipped by each such handler in such prior period as the Commissioner determines to be representative, or both, to the end that the total quantity of such citrus fruits, or any grade, variety, size, or quality thereof, to be marketed in, or transported to any or all markets, other than in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such citrus fruits, during any specified period or periods, shall be equitably apportioned among all of the handlers thereof.

(3) Determining, or providing methods for determining, the existence and extent of the surplus of such citrus fruits, or of any grade, variety, size, or quality thereof, and providing for the control and disposition of such surplus, but so as not to burden or obstruct interstate or foreign commerce in such citrus fruits, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

#### Additional Terms and Conditions

Sec. 8. Marketing agreements executed and licenses issued under this Act shall, in addition, contain one or more of the following terms and conditions:

(1) Providing for the selection by the Commissioner, or a method for the selection by the Commissioner, of an administrative committee or committees and defining their powers and duties. Such powers shall be limited:

(a) To administering such license in accordance with its terms and provisions;

(b) To making rules and regulations to effectuate the terms and provisions of such license;

(c) To receiving, investigating, and reporting to the Commissioner complaints of violations of such license;

(d) To recommending to the Commissioner amendments to such license;

(e) To collecting from each handler a fee or assessment representing his pro rata share of such estimated expenses, including expenses incurred in hearings held on, and in the execution of such marketing agreement, as the

Commissioner, after the submission to him by such administrative agency or agencies of a proposed budget, finds<sup>1</sup> will probably be required to cover expenditures necessarily to be incurred by such agency or agencies, during any period specified by him, for the maintenance and functioning of such agency or agencies; to receiving, expending, and accounting for the funds so collected, and to return to such handler his pro rata share of any unexpended balances which the administrative committee or committees, with the approval of the Commissioner, finds<sup>1</sup> are not so required.

(2) Any other terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in Section 7.

<sup>1</sup> Probably should read "funds".

*Assent of Handlers and Producers; Procedure*

Sec. 9. Pursuant to the provisions of this Act, the Commissioner may, with respect to citrus fruits, enter into a marketing agreement or issue a license thereunder, but no license issued pursuant to this Act shall become effective

(a) unless and until the handlers of not less than fifty-one (51) per cent of the volume of the commodity covered by such license, or fifty-one (51) per cent of the number of such handlers, have assented thereto in writing, and

(b) unless and until the Commissioner determines that the issuance of such license is approved or favored, (1) by at least sixty-six and two-thirds (66 $\frac{2}{3}$ ) per cent of the producers who, during a representative period, determined by the Commissioner, have been engaged within the area covered by such license in the production for market of the citrus fruits covered thereby in commercial quantities, or, (2) by producers who, during such representative period, have produced for market for sale at least sixty-six and two thirds (66 $\frac{2}{3}$ ) per cent of the volume of such citrus fruits produced for market within the area covered by such license.

Such representative period may by the Commissioner be determined to be the next preceding crop season prior to the holding of said hearing, or may be such other representative period as the Commissioner may determine.

In the determination of whether the issuance of such license is approved or favored pursuant to the provisions of this Section, the Commissioner is required to determine the approval or disapproval of producers with respect to the issuance of any license or order, or any term or condition thereof, or the termination thereof, and the Commissioner shall consider the approval or disapproval by any Cooperative Association of Producers, bona fide engaged in marketing citrus fruits or products thereof

covered by such license or order, or in rendering services for or advancing the interest of the producers of such citrus fruits, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with such cooperative association of producers.

Such approval, when executed by such cooperative marketing association may be executed in the name of such association and need not set forth the names of the producers on whose behalf it signs.

*License, Issuance of; Notice*

Sec. 10. (1) Whenever any member of any class of handlers, processors, or distributors is licensed hereunder, an identical license shall be issued to all members of the same class of handlers, processors, or distributors.

(2) Upon the issuance of any license, or any amendment thereof, a notice of said license or amendment shall be posted on a public bulletin board to be maintained by the Commissioner in his office and a copy of such notice shall be published in a daily newspaper of general circulation published in the citrus area covered by this Act, and in such other paper or papers as the Commissioner may prescribe. No license or any amendment thereof shall become effective until three (3) days after such posting and publication. It shall also be the duty of the Commissioner to mail a copy of the notice of said license to all known licensees whose names and addresses may be on file in the office of the Commissioner and to every person who files in the office of the Commissioner a written request for such notice.

*Termination or Suspension of License by Commissioner*

Sec. 11. (1) Whenever, upon his own investigation, or otherwise, the Commissioner finds that any marketing agreement theretofore executed or any license issued under this Act, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this Act, he shall terminate, or suspend for a specified period, the operation of such marketing agreement or license or such provision thereof.

(2) If the Commissioner finds that the termination of any license or marketing agreement is favored by a majority of the producers who, during such representative period determined by the Commissioner, have been engaged in the production within the area in the State of Texas as covered by this Act for marketing of citrus fruits specified in such marketing agreement, or license, and who during such representative period, produced for market more than sixty-six and two thirds (66 $\frac{2}{3}$ ) per cent of the volume of such citrus fruits produced for market within the area in the State of Texas covered by this Act, or produced within the area in the State of Texas covered by this Act for marketing elsewhere, the Commissioner shall terminate, or suspend for a specified period, such marketing agreement or license or any term or provision thereof, but such termination shall be effective only if an-

nounced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or license.

Amendment of Agreement or License; Notice;  
Hearing; Findings Necessary

Sec. 12. Whenever the Commissioner shall have reason to believe that an amendment of any marketing agreement or license is necessary, or desirable, in order to effectuate the policy of this Act, he shall call a hearing upon such amendment. Such hearing shall be held in the same manner and upon the same notice as upon an original marketing agreement or license. The notice of hearing shall refer by name and date of execution of the agreement or to the issuance of license, or both, to which the amendment is proposed. At such hearing the Commissioner shall receive and hear evidence offered for and against the proposed amendment by any interested person.

If upon such hearing upon said proposed amendment it shall be found by the Commissioner that the following facts actually exist:

1. The proposed amendment will not prevent such marketing agreement and license, or either, from meeting the requirements of Section 5 of this Act;
2. The proposed amendment will tend to facilitate the administration of such marketing agreement and license, or will enable such marketing agreement and license to better meet the requirements of Section 5 of this Act;

he shall make written findings to that effect, and shall execute such amendment to such marketing agreement, or shall issue such amendment to such license, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he shall not issue such amendment to such marketing agreement or license. Such findings, if against the existence of any such facts, shall in no way impair or affect the marketing agreement or license to which said amendment was proposed.

In considering such amendment, the Commissioner shall take into consideration the evidence presented at the original hearing on the marketing agreement, or license to which such amendment is proposed, and upon any prior amendment thereto.

No amendment to a marketing agreement or license shall be effective until approved in the same manner as required by Section 9 of this Act for the original marketing agreement or license to which such amendment was proposed.

Rules, Regulations and Orders of Commissioner

Sec. 13. The Commissioner may adopt and enforce all rules, regulations, and orders necessary or desirable to carry out the provisions of this Act and not inconsistent with law. Every general rule, regulation, or order of the Commissioner shall be posted for public inspection in the main office of the Commissioner at least

three (3) days before it shall become effective, and shall be given such further publicity, by advertisement in a daily newspaper of general circulation in the territory affected by the issuance of such rule, regulation, or order, or otherwise as the Commissioner shall deem advisable. An order applying only to a person or persons named therein shall be served on the person or persons affected: (1) by personal delivery of a certified copy; or (2) by mailing a certified copy in a sealed envelope with postage prepaid to each natural person or in the case of a corporation in like manner to any officer of or agent thereof. Compliance with these provisions shall constitute due and sufficient notice to all persons affected by such rule or order. The Commissioner shall upon request mail to any person affected by any general rule or regulation promulgated by him, a copy of the same and may charge a reasonable fee therefor.

Revocation or Suspension of License for Violation  
Thereof; Criminal Penalty; Civil  
Liability; Injunction

Sec. 14. (1) The Commissioner may, after reasonable notice and opportunity to be heard, revoke or suspend the license of any person issued hereunder for violation of such license or any provision thereof.

(2) Every person who violates any provision of any marketing agreement or license to which he is subject or who, after due revocation of his license, or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby, shall be guilty of a misdemeanor and on conviction thereof, punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by imprisonment of not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment. Each day during which any of the violations above referred to continue shall constitute a separate offense.

(3) Any person willfully exceeding any quota, allotment, or salable percentage fixed for him by or under any license issued by the Commissioner, or any amendment thereto or any rule, regulation, or order issued by the Commissioner, or who shall make any shipment without first obtaining a required allotment or quota or qualifying to ship his salable percentage, or any other person knowingly participating or aiding in so doing, shall become civilly liable to the State in a sum equal to three times the current market value of any excess or shipment, such sum to be recoverable in a civil suit, brought in the name of the State of Texas or in the name of the administrative agency under the particular license involved. The funds so collected shall be used in the administration of the particular license.

(4) The Attorney General of this State, or any District Attorney of this State or any County Attorney, may, upon his own initiative, and shall upon complaint of any person, if aft-

er investigation he believes a violation to have occurred, bring an action in the name of the State of Texas in any court of competent jurisdiction of the State of Texas for an injunction against any person violating any provisions of any marketing agreement or license or order, rule, or regulation duly made or promulgated thereunder to which he is subject or who, after due revocation of his license or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby.

(5) Any administrative agency under any marketing agreement or license may, with the approval of the Commissioner, bring an action similar to that described in paragraph (3) of this Section.

(6) In any action brought to enforce any of the provisions of this Act, as provided in this Section 14:

(a) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff a reasonable attorney's fee and any and all costs of suit.

(b) Any such action may be commenced either in the county where any defendant resides, or where any act or omission or part thereof complained of occurred.

(7) The penalties and remedies herein prescribed with regard to any violation mentioned in this Section 14 shall be concurrent and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or administrative rights, remedies, forfeitures, or penalties provided or allowed by law with respect to any such violation.

#### Assessments and Fees; Collection; Record; Reports

Sec. 15. (1) Any assessment or fee duly fixed and levied pursuant to any such marketing agreement or license, in accordance with Section 8, paragraph (2), subdivision (e) of this Act, shall constitute a personal debt of every person so assessed and shall be immediately due and payable to the administrative agency charged with the collection thereof and the latter may in its own name, with the approval of the Commissioner, bring an action in a State Court of competent jurisdiction for the collection thereof.

(2) Any funds collected by the administrative agency from the levying of such fees and assessments shall be used for the purpose set forth in the marketing agreement or license under which it was collected. A full and complete record thereof shall be kept to which the Commissioner may have access at any time, and a report of the activities and proceedings shall be filed with the Commissioner from time to time as he may require.

#### Records and Books of Persons Subject to Agreement or License; Information Furnished Commissioner; Commissioner to Take Testimony and Issue Subpoenas; Perjury

Sec. 16. (1) All persons subject to a marketing agreement or license issued hereunder

shall maintain books and records reflecting their operations under said marketing agreement or license and shall furnish to the Commissioner or his duly authorized or designated representative, such information as may be requested by them relating to operations under said marketing agreement and license, and shall permit the inspection by said Commissioner or his duly authorized or designated representative, of such portions of such books and records as relate to operations under the said marketing agreement and license.

(2) Information obtained by any person hereunder shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by an administrative agency to give legal advice thereon, or by Court order.

(3) For the purpose of carrying out the terms of this Act the Commissioner may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of relevant books, records, or documents of any kind.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the Commissioner in obedience to the subpoena of the Commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the Commissioner in obedience to a subpoena issued by him; provided that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

#### Filing Fee and Deposit; Collection of Funds by Committee; Custody of Funds; Distribution of Unexpended Funds

Sec. 17. Every application for a marketing agreement and license submitted to the Commissioner for approval shall be accompanied by a filing fee of Ten Dollars (\$10), and shall be accompanied by a deposit from the applicant in such amount as the Commissioner may deem sufficient and necessary to defray the expenses of preparing and making effective such marketing agreement and license. The Commissioner shall thereafter exact and require, by requisition on the appropriate administrative committee or committees, charged with the collection of funds for expenses under such marketing agreement, that such committee or committees collect, report, and pay over monthly to the Commissioner the amount deemed necessary and sufficient, and requisitioned from such administrative committee or committees by the Commissioner, to defray the actual expenses of the Commissioner to be incurred during the subsequent month in the administration

and enforcement of any such marketing agreement or license, under such rules and regulations as he may prescribe.

But all moneys collected from assessments, or otherwise, imposed under this Act and under marketing agreements executed in pursuance thereof, or licenses issued thereunder, by the administrative committee or committees created under this Act, not requisitioned by the Commissioner for administrative expenses as hereinbefore provided in this Section, shall remain in the custody of such administrative committee or committees until the close of the current marketing season or year for which same was collected (not to extend further than the period covered by such marketing agreement), at which time the administrative committee or committees shall return to such handler or handlers his pro rata share of such unused, unexpended, and unrequisitioned assessment or assessments.

Reports by Commissioner as to Moneys Received; Deposit in State Treasury; Agriculture Department Officers and Employés Used in Carrying Out Act

Sec. 18. (1) All moneys received by the Commissioner hereunder shall be by him, at the end of each month, reported to the State Comptroller and at the same time deposited in the State Treasury. All moneys so credited are hereby appropriated for use of said Commissioner to be expended in accordance with law in carrying out the provisions hereof.

(2) Within thirty (30) days prior to each Regular Session of the Legislature, the Commissioner shall submit to the Governor a full and true report of transactions under this Act during the preceding biennium, including a complete statement of receipts and expenditures under this Act during the period and shall submit quarterly to the administrative agency under each marketing agreement or license a complete statement of receipts and expenditures in connection with the administration of each marketing agreement or license during the quarter.

(3) The Commissioner is authorized to use, and to permit the administrative agency or agencies, committee, authority, or body created pursuant to any marketing agreement executed or license issued under this Act, to use the various employees or officers of the State Department of Agriculture in carrying out the provi-

sions of this Act or any marketing agreement executed or license issued pursuant thereto.

#### Anti-trust Laws Unaffected

Sec. 19. Nothing in this Act shall alter, repeal, change or modify the anti-trust laws of this State, and if any section and/or subsection of this Act is in violation of the anti-trust laws, such section and/or subsection shall fall and the anti-trust laws both civil and criminal shall stand and prevail over said section and/or subsection held to be in contravention of the anti-trust laws of this State.

#### Cooperating With Other States and Federal Government to Secure Uniformity of Administration

Sec. 20. The Commissioner may confer and cooperate with the legally constituted authorities of other States and of the United States, in order to secure uniformity in the administration of Federal and State marketing agreements, standards, licenses, or orders and in the regulations thereby prescribed, and said Commissioner of Agriculture shall have power to conduct hearings jointly with the Secretary of Agriculture of the United States, and may exercise his powers under this Act to effect such uniformity of administration and regulations not inconsistent with the provisions of this Act.

#### Application of Act Limited to Certain Areas

Sec. 21. This Act shall apply and be effective only in the areas of any three (3) citrus fruit producing counties whose boundaries are contiguous to each other and whose aggregate population according to the last preceding Federal Census was not less than one hundred and sixty-five thousand and forty-three (165,043) inhabitants.

#### Name of Act

Sec. 22. This Act may be known and cited as the "Texas Citrus Marketing Act."

#### Partial Invalidity

Sec. 23. If any section, sentence, clause, or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sentence, clause, and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional.

[Acts 1937, 45th Leg., p. 724, ch. 362.]

## TITLE 94

# MILITIA—SOLDIERS, SAILORS AND MARINES

Chapter	Article
1. Militia and State Military Forces .....	5765
2. Texas State Guard .....	5768
3. National Guard .....	5780
3A. Miscellaneous Provisions .....	5890d
4. State Naval Militia [Repealed] .....	5891
4A. Texas Navy .....	5891.1
5. Texas Defense Guard [Repealed] .....	5891a
5A. Security Personnel [Repealed] .....	5891A-1
6. Texas State Guard Reserve Corps [Repealed] .....	5891c

### CHAPTER ONE. MILITIA AND STATE MILITARY FORCES

Article
5765. General Provisions.
5766. Reserve Militia.
5767. Repealed.

*Chapter 1 of Title 94, consisting of articles 5765 to 5769c, and Chapter 2, consisting of articles 5770 to 5779, were revised by Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, to read as now set out in Chapter 1, consisting of articles 5765 to 5767, and Chapter 2, consisting of article 5768.*

#### DISPOSITION TABLE

Showing where provisions of former articles of Chapters 1 and 2 are now covered in articles 5765 and 5766 as enacted by Acts 1965, 59th Leg., p. 1601, ch. 690.

Former Articles	New Articles and Sections
5765 .....	5765, § 1
5766 .....	5765, § 2
5767 .....	5765, § 3
5768 .....	5765, § 4
5769 .....	5765, § 5
5769a .....	5765, § 6
5769b (repealed) .....	See 5765, § 7
5769b-1 .....	5765, § 7
5769c .....	5766, § 1
5770 .....	5766, § 1
5771 .....	5766, § 2
5772 .....	5766, § 3
5773 .....	5766, § 4
5774 .....	5766, § 1
5775 .....	5766, § 1
5776 .....	5766, § 1
5777 .....	5766, § 4
5778 .....	5766, § 1
5779 .....	5766, § 1

### Art. 5765. General Provisions

#### The State Militia

Sec. 1. The militia of this State shall be divided into two classes, the Active and Reserve Militia. The Active Militia, herein referred to as the State Military Forces, shall consist of the organized and uniformed military forces of this State which shall be known as the Texas Army National Guard, the Texas Air National Guard, the Texas State Guard, and any other militia or military force organized under the laws of this State; the reserve militia shall consist of all those liable to serve, but not serving, in the State Military Forces. As used herein, the Texas Army National Guard and the Texas Air National Guard shall be referred to collectively as the Texas National Guard.

#### Who Are Subject

Sec. 2. All able-bodied citizens, male and female, and able-bodied males and females of foreign birth who have declared their intention to become citizens, who are residents of this State and males between eighteen and sixty years of age and females between twenty-one and fifty-five years of age, and who are not exempt by the laws of the United States or of this State, shall constitute the reserve militia and be subject to military duty.

#### Exemptions

Sec. 3. In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty in this State:

(a) The Lieutenant Governor and the heads of the several departments.

(b) The judges and clerks of all courts of record.

(c) The Members and officers of both Houses of the Legislature.

(d) Each sheriff, district attorney, county attorney, county assessor, county collector, and county commissioner.

(e) The mayor, councilmen, aldermen, assessor and collector of incorporated cities and towns.

(f) The officers and employees of the Texas Department of Correction, the officers and employees of all State Hospitals and Special Schools, the officers and employees of public or private hospitals and the officers and employees of nursing homes.

(g) The members of any regularly organized and paid fire or police department

in any city or town, but no member shall be relieved from military duty because of his joining any such department.

(h) All ministers of the gospel exclusively engaged in their calling.

(i) Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.

(j) Any person who conscientiously scruples against bearing arms.

(k) All such exempted persons, except those enumerated in Subsection (i) shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof.

#### Commander-in-Chief

Sec. 4. The Governor by virtue of his office, shall be commander-in-chief of the State Military Forces, except such portions as may be at times in the service of the United States. Whenever the Governor is unable to perform the duties of commander-in-chief, the Adjutant General shall command the State Military Forces, except in cases where the Lieutenant Governor or the president of the Senate, under the laws of this State, is required to perform the duties of Governor.

#### Expenditures

Sec. 5. All amounts expended from appropriations made for the State Military Forces shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, approved by both the Adjutant General and the Governor before their payment. The Comptroller shall not issue warrants upon the State Treasury for any moneys expended under this title until said itemized accounts have been filed in the Comptroller's office.

#### Discharge

Sec. 6. At the termination of the appointment of an officer in the State Military Forces and at the termination of any enlistment in such Forces, either for expiration of term or for any other cause, the person affected shall be furnished a certificate of discharge bearing the character of his service.

#### Leaves of Absence to Public Officers and Employees

Sec. 7. (a) All officers and employees of the State of Texas and of any county or political subdivision thereof, including municipalities, who shall be members of the State Military Forces, or members of any of the Reserve Components of the Armed Forces, shall be entitled to leave of absence from their respective duties without loss of time or efficiency rating or vacation time or salary on all days during which they shall be engaged in authorized training or duty ordered or authorized by proper authority, for not to exceed fifteen (15) days in any one calendar year.

(b) Members of the State Military Forces, or members of any of the Reserve Components of the Armed Forces who are in the employ of the State of Texas, who are ordered to duty by proper authority shall, when relieved from duty, be restored to the position held by them when ordered to duty.

(c) The provision limiting such leaves of absence with pay to fifteen (15) days in any one calendar year shall not apply to Members of the Legislature; but Members of the Legislature shall be entitled to pay on all days, without limitation as to number thereof, when they may be absent from the Session of the Legislature and engaged as above provided.

#### Reemployment of Person Called to Active Duty

Sec. 7A. (a) No private employer may terminate the employment of a permanent employee who is a member of the State Military Forces because the employee is ordered to active duty by proper authority during an emergency of any kind within this state. The member is entitled to return to the same employment that he held at the time he was ordered to active duty.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the member must, as soon as practical upon his release from duty, give written or actual notice of his intention to return to his employment.

(c) A person who is injured because of a violation of this section is entitled to just damages, recoverable at law, in an amount not to exceed six months' compensation at the rate at which he was compensated at the time he was ordered to active duty. In addition to damages, the injured person is entitled to recover reasonable attorney's fees, to be approved by the court.

(d) It is a defense in an action brought under this section that the employer's circumstances changed to such an extent during the time that the member was ordered to active duty that reemployment was impossible or unreasonable.

#### Discharge of Duty

Sec. 8. Members of the State Military Forces ordered into active service of the State by proper authority shall not be liable civilly for any act or acts done by them while in the discharge of their duty. When a suit shall be commenced in any court by any person against any officer of the State Military Forces for any act done by such officer in his official capacity in the discharge of his duty, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to the law, the court shall require the person instituting the suit to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. In case the plaintiff shall be non-suit-

ed, or have a verdict or judgment rendered against him, the defendant shall recover treble costs.

[Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 464, ch. 311, § 1; Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1750, ch. 512, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 988, ch. 399, § 2(H), eff. Jan. 1, 1974.]

#### Art. 5766. Reserve Militia

##### Military Duty

Sec. 1. The reserve militia shall not be subject to active military duty, except when called into service of this State, in case of war, insurrection, invasion or for the prevention of invasion, the suppression of riot, tumults, and breaches of the peace, or to aid the civil officers in the execution of the laws and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise as the Governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the Governor may assign them to existing organizations of the State Military Forces, or organize them as the exigency of the occasion may require.

##### Drafts

Sec. 2. Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the Governor may apportion the number by draft according to the population of the several counties of the State, or otherwise, as he shall direct. The Governor shall direct his order to a County Emergency Board hereby created in each county. Such County Emergency Board shall consist of the county judge, the sheriff and the tax assessor and collector, or, in the event of the incapacity or inability of any of the above to act, such other public official as the Governor may designate. The County Emergency Board shall select the persons to fill the draft of the Governor and shall establish fair and equitable procedures for such selection in accordance with regulations prescribed by the Governor. The Board shall, upon completion of its selection, forward a list of those persons so selected to the Governor and shall notify each person selected of the time and place to appear and report.

##### Drafts: Report

Sec. 3. Every member of the reserve militia ordered out, or who volunteers, or is drafted under the provisions of this Article shall by notice of such draft become a member of the State Military Forces as prescribed in Section 101 of Article 5788 and shall be subject to the punitive provisions thereof. Every such member who does not appear at the time and place designated by the County Emergency Board shall be punished as a court martial shall direct.

##### Responsibility

Sec. 4. Any member of the County Emergency Board who neglects or refuses to per-

form any duty placed upon him by this Article shall be guilty of a misdemeanor offense punishable by a fine of not more than One Thousand Dollars (\$1,000) and by confinement of not less than six (6) months and not more than twelve (12) months in jail.

##### Duty Travel

Sec. 5. (a) Any member of the State Military Forces going to and returning from any parade, encampment, drill or other meeting which he may be required by law to attend, shall, together with his conveyance and military property, be allowed to pass through all toll roads, bridges and ferries, free of charge, if he is in uniform and if he presents an order for duty or such identification as the Adjutant General shall prescribe.

(b) Any member of the State Military Forces who claims the privilege conferred in Subsection (a) when he is not in truth and in fact in the status therein mentioned shall upon conviction thereof be guilty of a misdemeanor punishable by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

##### Oaths

Sec. 6. Any commissioned officer in the State Military Forces is authorized to administer oaths for purposes of military administration. The signature without seal of any such officer, together with the title of his assignment, shall be prima facie evidence of his authority.

##### Performance of Duty

Sec. 7. Any person who shall wilfully hinder, delay, or obstruct any portion of the State Military Forces on active duty in the service of this State in the performance of any military duty, or who shall wilfully attempt to do so, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) or by imprisonment for not less than one month nor more than one year, or both.

##### Voting Privilege

Sec. 8. Any unit, force, division or command of the State Military Forces that is engaged in regular training on any days on which there is a primary, general, or special election for any State or Federal office shall provide time off or so arrange the duty hours to permit all personnel to vote in said election; provided, however, that this Section shall not apply in event of war, invasion, insurrection, riot, tumult or imminent danger thereof, or during periods of annual active duty for training not exceeding fifteen (15) days.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 443, ch. 215, § 1; Acts 1965, 59th Leg., p. 1601, ch. 690, § 1.]

Art. 5767. Repealed by Acts 1967, 60th Leg., p. 421, ch. 186, § 2, eff. May 12, 1967

## CHAPTER TWO. TEXAS STATE GUARD

Article  
5768. Texas State Guard.  
5769 to 5779. Repealed.

*Chapter 1 of Title 94, consisting of articles 5765 to 5769c and Chapter 2, consisting of articles 5770 to 5779, were revised by Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, to read as now set out in Chapter 1, consisting of articles 5765 to 5767, and Chapter 2, consisting of article 5768.*

### Art. 5768. Texas State Guard

#### Authorization

Sec. 1. In order to provide a reservoir of militia strength for use by the State of Texas as a supplement to the Texas National Guard, a Texas State Guard is hereby created, authorized and provided. The Texas State Guard is a part of the State Militia of Texas within the meaning of the second Amendment of the Constitution of the United States and a defense force within the meaning of Section 109 of Title 32, United States Code.

#### Organization and Personnel

Sec. 2. The Texas State Guard shall consist of such units as the Governor of Texas shall deem advisable. The Texas State Guard shall be composed of all present members of the Texas State Guard Reserve Corps, which is hereby abolished, whether assigned to existing units or unassigned, and such other citizens of Texas as may volunteer for service therein and who shall have attained the age of seventeen (17) years, who shall meet such other qualifications as shall be prescribed by the Governor, and who shall be acceptable to and approved by the Governor, or by the Adjutant General under his direction. The commissioned officers of the Texas State Guard shall be appointed, commissioned and assigned by the Governor or under his authority and direction to hold office and assignment during the pleasure of the Governor. All members of the Texas State Guard shall be subject to serve on active duty at the call and by order of the Governor.

#### Disqualifications

Sec. 3. No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this State or of the United States shall not be eligible for enlistment or reenlistment, unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer of the organization who approved such expulsion or issued such dishonorable discharge.

#### Rules and Regulations

Sec. 4. The Governor shall have full control and authority over the Texas State Guard and is hereby authorized to prescribe rules and reg-

ulations not inconsistent with the provisions of this Act governing the enlistment, organization, administration, uniforms, equipment, maintenance, command, training and discipline of such forces; provided such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the Texas National Guard and the rules and regulations promulgated thereunder.

#### Active Duty

Sec. 5. The Texas State Guard or any element, unit or member thereof, may be activated and may be called to active duty at the discretion of the Governor, and when so called or when upon active duty, the Texas State Guard, or any element or unit thereof, shall have and exercise all rights, privileges, duties, functions and authorities, which are now or may hereafter be conferred or imposed by law upon the State Military Forces.

#### Honorary Reserve

Sec. 6. At the discretion of the Governor, officers and enlisted personnel of the Texas State Guard who become physically disabled or who shall attain the age of sixty (60) years, or who shall have attained twenty-five (25) years of satisfactory service, may be transferred by the Governor, or under his authority and direction, to the Texas State Guard Honorary Reserve. Such officers and enlisted personnel may, at the discretion of the Governor, be advanced one grade or rank at the time of such transfer.

#### Financial Assistance

Sec. 7. The commissioners court of each county and the council or commission of each city or town in this State is hereby authorized, in the discretion of each, to appropriate a sufficient sum not to exceed One Hundred Dollars (\$100) per month, not otherwise appropriated, to assist in paying the necessary expenses for the administration of any unit of the Texas State Guard located in their respective counties and in or near their respective cities or towns; and any and all such donations heretofore made by any commissioners court or any council or commission of any city or town to any such unit or units of the Texas State Guard is hereby validated. The appropriation of State funds to the Texas State Guard shall be the amounts which are designated in line items in the biennial appropriations bill.

#### Maintenance of Records

Sec. 8. The Adjutant General of Texas is hereby charged with the care, maintenance and preservation of the individual, unit and organization records of the Texas State Guard and the Texas State Guard Honorary Reserve.

#### Equipment and Funds

Sec. 9. For the use of the Texas State Guard, the Governor is hereby authorized to requisition from the United States Government such arms and equipment as may be in posses-

sion, and can be spared by, the United States Government; and to make available to such forces the facilities of State armories and their equipment and such other State premises and property as may be available. Authorization is hereby provided for school authorities to permit the use of school buildings by the Texas State Guard; provided further that county commissioners courts, city authorities, communities, and civic and patriotic organizations are empowered and authorized by this Chapter to provide funds, armories, equipment, material, transportation, or other appropriate services or facilities, to the Texas State Guard.

#### Use Without This State

Sec. 10. The Texas State Guard shall not be required to serve outside the boundaries of this State except:

(a) Upon the request of the Governor of another state, the Governor of this State may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state, who are actually engaged in defending such other state. Such forces may be recalled by the Governor at his discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces beyond the borders of this State into another state until they are apprehended or captured by such organization, unit, or detachment, or until the military or police forces of the other state, or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided such other state shall have given authority by law for such pursuit by such forces of this State. Any such person who shall be apprehended or captured in any other state by an organization, unit, or detachment of the forces of this State shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken, or to the United States, but such surrender shall not constitute a waiver by this State of its right to extradite or prosecute such person for any crime committed in this State.

#### Permission to Forces of Other States

Sec. 11. Any military forces or organization, unit, or detachment thereof, of another state, who are in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces, may continue such pursuit into this State until the military or police force of this State or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and are hereby authorized to arrest or capture such persons within this State while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other

state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This Section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

#### Federal Service

Sec. 12. Nothing in this Chapter shall be construed as authorizing the Texas State Guard, or any part thereof, to be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

#### Qualifications of General Officers

Sec. 13. To be qualified and eligible for appointment as a General Officer of the Texas State Guard, a person must have been a federally recognized officer, not less than field grade of the Texas National Guard, a regular or reserve component of the United States Army or Air Force, or, must have completed at least fifteen (15) years service as a commissioned officer in the State Military Forces or a regular or reserve component of the United States Army or Air Force.

[Acts 1925, S.B. 84; Acts 1965, 59th Leg., p. 1601, ch. 690, § 1.]

Arts. 5769, 5769a. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

Art. 5769b. Repealed by Acts 1953, 53rd Leg., p. 584, ch. 227, § 5

Arts. 5769b-1, 5769c. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

Arts. 5770 to 5779. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

### CHAPTER THREE. NATIONAL GUARD

#### Article

- 5780. Organization.
- 5781. Adjutant General.
- 5782. Commissioned Officers and Enlisted Men.
- 5783. Service and Duties.
- 5784. Arms, Equipment, Etc.
- 5785. Oaths.
- 5786. General Provisions.
- 5787. Veterans County Service Office.
- 5788. Texas Code of Military Justice.
- 5789. Awards, Decorations and Medals.
- 5790 to 5890c. Repealed.

*Chapter 3, Title 94, of the Revised Civil Statutes, 1925, consisting of articles 5780 to 5890c, relating to the National Guard, National Guard Armory Board, veterans affairs and the Code of Military Justice, was amended and revised by Acts 1963, 58th Leg., p. 209, ch. 112, to consist of articles 5780 to 5789, as herein set out.*

## DISPOSITION TABLE

Showing where provisions of former articles of chapter three are now covered in articles 5780 to 5789, as enacted by Acts 1963, 58th Leg., p. 209, ch. 112.

Former Articles	New Articles and Sections	Former Articles	New Articles and Sections
5780	5780, sec. 1	5833	5783, sec. 4
5781	5780, sec. 2	5834	5783, sec. 5
5782	5780, sec. 3	5835	5783, sec. 6
5783	5780, sec. 4	5836	5783, sec. 7
5784	5780, sec. 5	5837	—
5785	—	5837a	—
5786	5780, sec. 6	5837b	—
5787	5781, sec. 1(a)	5838	5783, sec. 8
5788	5781, sec. 2	5839 (repealed)	—
5789	5781, sec. 3	5840	5783, sec. 9(a)
5790	5781, sec. 4	5841	—
5790a	5781, sec. 5	5842	—
5791	5781, sec. 6	5843	—
5792	5781, sec. 7	5844	—
5793	5781, sec. 8	5845	5783, sec. 10
5794	5781, sec. 9	5845a	5783, sec. 11
5795	5781, sec. 10	5846	5783, sec. 12
5796	5781, sec. 11	5847	5783, sec. 13(a)
5796a	5781, sec. 12	5848	—
5797	5781, sec. 13	5849	—
5798	5781, sec. 14	5850	5784, sec. 1
5798a (repealed)	—	5851	5784, sec. 2
5798a-1 (repealed)	—	5852	5784, sec. 3
5798a-2	5787, sec. 1	5853	5784, sec. 4
5798a-3	5787, sec. 2	5854	5784, sec. 5
5798a-4	5787, sec. 3	5855	5784, sec. 6
5799	—	5856	5784, sec. 7
5800	5782, sec. 1	5857	5784, sec. 8
5801	5782, sec. 2	5858	5785
5802	—	5859	—
5803	—	5860	—
5804	—	5861	—
5805	—	5862	—
5806	5785	5863	—
5807	5782, sec. 3	5864	5788, sec. 1107(d)
5808	—	5865	—
5809	—	5866	5788, sec. 1112(a)
5810	—	5867	5788, sec. 1112(b)
5811	—	5868	5788, sec. 1112(c)
5812	—	5869	—
5813	—	5870	5788, sec. 1112(d)
5814	5782, sec. 4	5871	5788, sec. 1113(a)
5815	—	5872	5788, sec. 1113(b)
5816	—	5873	5788, sec. 1113(c)
5817	—	5874	5788, sec. 1113(d)
5818	—	5875	5788, sec. 1113(e)
5819	—	5876	—
5820	—	5877	5788, sec. 1106(b)
5821	5785	5878	5788, sec. 1108(c)
5822	—	5879	5788, sec. 1108(a)
5823	5782, sec. 6	5880	5788, sec. 1108(b)
5824	5782, sec. 5	5881	5788, sec. 1113(f)
5825	—	5882	5788, sec. 1110
5826	—	5883	5788, sec. 1109
5827	5782, sec. 7	5884	5786, sec. 1
5828	—	5885	5786, sec. 2
5829	5782, sec. 8	5886	5786, sec. 3
5830	5783, sec. 1	5887	—
5831	5783, sec. 2	5888	5786, sec. 4
5832	5783, sec. 3	5889	5786, sec. 5
		5890	5786, sec. 6
		5890a (repealed)	—
		5890b	5786, sec. 7
		5890c	5786, sec. 8
		5891 (repealed)	—

## DERIVATION TABLE

Showing articles 5780 to 5789, as enacted by Acts 1963, 58th Leg., p. 209, ch. 112, and the parallel former articles of chapter three.

New Articles and Sections	Former Articles	New Articles and Sections	Former Articles
5780, sec. 1	5780	5786, sec. 8	5890c
5780, sec. 2	5781	5787, sec. 1	5798a-2
5780, sec. 3	5782	5787, sec. 2	5798a-3
5780, sec. 4	5783	5787, sec. 3	5798a-4
5780, sec. 5	5784	5788, sec. 101	—
5780, sec. 6	5786	5788, sec. 102	—
5781, sec. 1	5787	5788, sec. 103	—
5781, sec. 2	5788	5788, sec. 104	—
5781, sec. 3	5789	5788, sec. 105	—
5781, sec. 4	5790	5788, sec. 106	—
5781, sec. 5	5790a	5788, sec. 201	—
5781, sec. 6	5791	5788, sec. 202	—
5781, sec. 7	5792	5788, sec. 203	—
5781, sec. 8	5793	5788, sec. 204	—
5781, sec. 9	5794	5788, sec. 205	—
5781, sec. 10	5795	5788, sec. 206	—
5781, sec. 11	5796	5788, sec. 207	—
5781, sec. 12	5796a	5788, sec. 208	—
5781, sec. 13	5797	5788, sec. 301	—
5781, sec. 14	5798	5788, sec. 401	—
5782, sec. 1	5800	5788, sec. 402	—
5782, sec. 2	5801	5788, sec. 403	—
5782, sec. 3	5807	5788, sec. 404	—
5782, sec. 4	5814	5788, sec. 405	—
5782, sec. 5	5824	5788, sec. 406	—
5782, sec. 6	5823	5788, sec. 407	—
5782, sec. 7	5827	5788, sec. 408	—
5782, sec. 8	5829	5788, sec. 501	—
5783, sec. 1	5830	5788, sec. 502	—
5783, sec. 2	5831	5788, sec. 503	—
5783, sec. 3	5832	5788, sec. 504	—
5783, sec. 4	5833	5788, sec. 505	—
5783, sec. 5	5834	5788, sec. 506	—
5783, sec. 6	5835	5788, sec. 507	—
5783, sec. 7	5836	5788, sec. 508	—
5783, sec. 8	5838	5788, sec. 601	—
5783, sec. 9	5840	5788, sec. 602	—
5783, sec. 10	5845	5788, sec. 603	—
5783, sec. 11	5845a	5788, sec. 604	—
5783, sec. 12	5846	5788, sec. 605	—
5783, sec. 13	5847	5788, sec. 606	—
5784, sec. 1	5850	5788, sec. 701	—
5784, sec. 2	5851	5788, sec. 702	—
5784, sec. 3	5852	5788, sec. 703	—
5784, sec. 4	5853	5788, sec. 704	—
5784, sec. 5	5854	5788, sec. 705	—
5784, sec. 6	5855	5788, sec. 706	—
5784, sec. 7	5856	5788, sec. 707	—
5784, sec. 8	5857	5788, sec. 708	—
5785	5806	5788, sec. 709	—
	5821	5788, sec. 710	—
	5858(1)	5788, sec. 711	—
5786, sec. 1	5884	5788, sec. 712	—
5786, sec. 2	5885	5788, sec. 713	—
5786, sec. 3	5886	5788, sec. 714	—
5786, sec. 4	5888	5788, sec. 715	—
5786, sec. 5	5889	5788, sec. 716	—
5786, sec. 6	5890	5788, sec. 717	—
5786, sec. 7	5890b	5788, sec. 718	—
		5788, sec. 719	—
		5788, sec. 801	—
		5788, sec. 802	—
		5788, sec. 803	—
		5788, sec. 804	—
		5788, sec. 901	—
		5788, sec. 902	—

New Articles and Sections	Former Articles
5788, sec. 903	-----
5788, sec. 904	-----
5788, sec. 905	-----
5788, sec. 906	-----
5788, sec. 907	-----
5788, sec. 908	-----
5788, sec. 909	-----
5788, sec. 910	-----
5788, sec. 911	-----
5788, sec. 912	-----
5788, sec. 913	-----
5788, sec. 914	-----
5788, sec. 1001	-----
5788, sec. 1002	-----
5788, sec. 1003	-----
5788, sec. 1004	-----
5788, sec. 1005	-----
5788, sec. 1006	-----
5788, sec. 1007	-----
5788, sec. 1008	-----
5788, sec. 1009	-----
5788, sec. 1010	-----
5788, sec. 1011	-----
5788, sec. 1012	-----
5788, sec. 1013	-----
5788, sec. 1014	-----
5788, sec. 1015	-----
5788, sec. 1016	-----
5788, sec. 1017	-----
5788, sec. 1018	-----
5788, sec. 1019	-----
5788, sec. 1020	-----
5788, sec. 1021	-----
5788, sec. 1022	-----
5788, sec. 1023	-----
5788, sec. 1024	-----
5788, sec. 1025	-----
5788, sec. 1026	-----
5788, sec. 1027	-----
5788, sec. 1028	-----
5788, sec. 1029	-----
5788, sec. 1030	-----
5788, sec. 1031	-----
5788, sec. 1032	-----
5788, sec. 1033	-----
5788, sec. 1034	-----
5788, sec. 1035	-----
5788, sec. 1036	-----
5788, sec. 1037	-----
5788, sec. 1038	-----
5788, sec. 1039	-----
5788, sec. 1040	-----
5788, sec. 1041	-----
5788, sec. 1042	-----
5788, sec. 1043	-----
5788, sec. 1044	-----
5788, sec. 1045	-----
5788, sec. 1101	-----
5788, sec. 1102	-----
5788, sec. 1103	-----
5788, sec. 1104	-----
5788, sec. 1105	-----
5788, sec. 1106	-----5877
5788, sec. 1107	-----5864
5788, sec. 1108	-----5878-5880
5788, sec. 1109	-----5883

New Articles and Sections	Former Articles
5788, sec. 1110	-----5882
5788, sec. 1111	-----
5788, sec. 1112	-----5866-5868 5870
5788, sec. 1113	-----5871-5875 5881
5788, sec. 1114	-----
5788, sec. 1115	-----
5789, sec. 1	-----
5789, sec. 2	-----
5789, sec. 3	-----
5789, sec. 4	-----
5789, sec. 5	-----
5789, sec. 6	-----
5789, sec. 7	-----
5789, sec. 8	-----

**Art. 5780. Organization**

**Strength**

Sec. 1. The Texas National Guard shall consist of the existing military organization, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this state, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this state, shall the maximum strength thereof exceed thirty-seven thousand (37,000) officers and enlisted men.

**Regulations**

Sec. 2. The Governor shall prescribe such regulations as he may see fit for the organization of the Texas National Guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this Chapter, and conform as near as practicable to the organization of the Armed Forces of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas National Guard or the reserve militia, and he shall have full control and authority over all matters touching the military forces of this state, its organization, equipment and discipline.

**Publication**

Sec. 3. The Governor shall make and publish regulations in accordance with existing military laws, for the government of the military forces of this state, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including the rules for the government of courts-martial; the existing regulations to remain in force until the Governor shall have published such regulations. The Governor shall, as he may see fit from time to time, cre-

ate new regulations, or amend, modify, or repeal existing regulations.

#### Governor's Staff

Sec. 4. The Governor shall have a staff consisting of the Adjutant General, Assistant Adjutants General and two aides-de-camp, one to be appointed from the Texas Army National Guard, and one to be appointed from the Texas Air National Guard. The Adjutant General and Assistant Adjutants General shall have rank as provided by this law; the aides-de-camp shall have the rank not above the grade of Lt. Colonel, while also serving, and shall be appointed by, and serve during the pleasure of the Governor, provided further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this state, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization.

#### Bodies Corporate

Sec. 5. Whenever any military unit is mustered into the State Military Forces of this state by the authority of the Governor, such unit shall, from the date of such muster in, be deemed and be held by law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of Two Hundred Thousand Dollars (\$200,000), (provided that the natural enhancement in value of any property properly acquired by any such military unit shall not affect the right of such military unit to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of the state or elsewhere; to have and use a common seal of such device as it may adopt, to ordain, establish, alter or amend by-laws for the government and regulation of the military unit affairs not inconsistent with the Constitution and laws of this state and of the United States, and the orders and regulations of the Governor; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers and in case of a military band, the non-commissioned officers, shall be directors, the senior the president.

#### Prohibiting Organization

Sec. 6. No body of men, other than the regularly organized State Military Forces of this state and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city, or town of this state; provided that students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service

of the United States may, with the consent of the Governor, drill and parade with firearms in public. Nothing herein shall be construed to prevent parades by the active militia of any other state as hereinafter provided.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

### Art. 5781. Adjutant General

#### Department

Sec. 1. (a) The Adjutant General shall be the head of the Adjutant General's Department and shall have the rank of Major General. He shall be appointed for a term of two (2) years by the Governor, by and with the advice and consent of the Senate, if in session.

(b) To be qualified for appointment as Adjutant General a person must at the time of his appointment be serving as a federally recognized officer, not less than field grade, of the Texas National Guard, must have previously served on active duty or active duty for training with the Army or Air Force and must have completed at least ten (10) years service as a federally recognized commissioned officer with an active unit of the Texas National Guard.

#### Bond

Sec. 2. The person appointed Adjutant General shall first enter into a bond with two (2) or more good and sufficient sureties payable to and to be approved by the Governor, which bond shall be in the sum of Ten Thousand Dollars (\$10,000), conditioned for the faithful performance of the duties of said office.

#### Seal

Sec. 3. The device upon the seal of the Adjutant General shall consist of a star of five (5) points with the words, "Office of Adjutant General, State of Texas," around the margin.

#### Powers

Sec. 4. The Adjutant General shall be in control of the military department of this state and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this state; and he shall perform such duties as the Governor may from time to time entrust to him relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the Department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chiefs of Staff of the Army and Air Force and the Secretaries of the military services, under the regulations and customs of the United States Armed Forces.

For and on behalf of the State of Texas, the Adjutant General is authorized to execute leases or subleases between the State of Texas, as lessee or sublessee, and the Texas National Guard Armory Board, as lessor or sublessor,

for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or subleases from time to time; and the Adjutant General shall not lease or sublease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board.

**Transfer of Camps, Etc., to National Guard Armory Board; Sale or Disposal as Surplus**

Sec. 5. For and on behalf of the State of Texas, the Adjutant General is authorized to designate and transfer any of the state-owned National Guard camps and all land and improvements, buildings, facilities, and installations and personal property in connection therewith, or any part of the same, to the Texas National Guard Armory Board, either for the purpose of administration thereof or for the purpose of sale or proper disposal otherwise when designated by the Adjutant General as "surplus" or in excess of the needs of the Texas National Guard, its successors or components. The Adjutant General is authorized prior to declaring the above described property as "surplus" and transferring same to the Texas National Guard Armory Board, to remove, sever, dismantle, or exchange any of said property for the use and benefit of the Texas National Guard or its successors.

**Duties**

Sec. 6. The Adjutant General shall, from time to time, define and prescribe the kind and amount of supplies to be purchased for the military forces of this state, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations or companies, or other necessary places for the safekeeping of such articles, and for the distribution of an adequate and timely supply of the same to the commanders of units, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safekeeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipment, military property, and stores throughout the state.

**Bids**

Sec. 7. The Adjutant General may prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under his department; and at his discretion may require any bid to be accompanied by a good bond in such penal sum as he deems advisable, conditioned that the bidder will enter into a contract agreeable to

the terms of his bid, if the same be awarded to him, within sixty (60) days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within said period of sixty (60) days.

**Regulations and Duties**

Sec. 8. The Adjutant General shall prescribe regulations not inconsistent with the law for the government of his department and the custody, use and preservation of the records and property appertaining to it whether belonging to the state or the United States, such regulations to be operative and in force when promulgated in the form of routine orders or letters of instruction and shall:

1. Superintend the preparation of such returns and reports as may be required by the laws of the United States from this state.

2. Keep a register of all officers of the militia of Texas, and keep in his office all records and papers required to be kept and filed therein.

3. Have printed at the expense of the state, when necessary, the military law and regulations of Texas, and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of Texas at the rate of one (1) copy to each.

4. Issue to each commissioned officer and headquarters one (1) copy of the necessary text books, and of such annual reports concerning the militia as the Governor may direct.

5. Cause to be prepared and issued all necessary blank books, blank forms and notices required to carry into full effect the provisions of this law.

**Report to Governor**

Sec. 9. He shall report annually to the Governor the following information to be laid before the Legislature.

1. A statement of all moneys received, and disbursed by him since his last annual report.

2. An account of all arms, ammunition, and other military property belonging to this state, or in possession of this state, from what source received, to whom issued, and its present condition, so far as he may be informed.

3. The number, condition and organization of the Texas National Guard and reserve militia.

4. Any suggestions which he may deem of importance to the military interests and conditions of this state, and the perfection of its military organization.

**Assistants**

Sec. 10. All necessary clerks and employees may be employed and laborers hired by the Adjutant General as may be required to carry on the operations of his Department.

## Assistant Adjutants General

Sec. 11. The Governor, on recommendation of the Adjutant General, shall appoint an Assistant Adjutant General for Army and an Assistant Adjutant General for Air. Each shall have the rank of Brigadier General. Each shall remain in office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. Each shall, before entering upon the duties of their office, take and subscribe to the oath of office prescribed for officers of the Texas National Guard, which oaths shall be deposited in the office of the Adjutant General. Each shall aid the Adjutant General by the performance of such duties as may be assigned them. In the case of death, absence, or inability of the Adjutant General to act, the Assistant Adjutant General, senior in rank, shall perform the duties of the Adjutant General. To be qualified for appointment as Assistant Adjutant General a person must at the time of his appointment be serving as a federally recognized officer, not less than field grade, of the Texas National Guard, must have previously served on active duty or active duty for training with the Army or Air Force and must have completed at least ten (10) years service as a federally recognized commissioned officer with an active unit of the Texas National Guard.

## Salary of Adjutant General and Assistant Adjutants General

Sec. 12. That on and after the passage of this Act, the salaries of the Adjutant General and the Assistant Adjutants General shall be the amounts which are designated in line items in the biennial appropriation bill.

## To Issue Certificates

Sec. 13. On the muster in to the State Military Forces of this state of any military unit, the Adjutant General shall issue to such organization, a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the Military Forces of this state, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the Adjutant General may prescribe. Such certificate shall be in evidence in all the courts of this state that the organization therein named is duly incorporated.

## To Purchase Stores

Sec. 14. The Adjutant General, after the appropriations are made for that purpose, may purchase and keep ready for use, or issue to the military forces of this state, as the best interests of the service may require, such amount and kind of quartermasters, ordnance, subsistence, medical, signal, engineers, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies, both the property of this state and the United States, are properly cared for and

kept in good order, ready for use; and all accounts which may accrue against this state under the provisions of this Chapter shall, if correct, be certified and approved by the Adjutant General and paid out of the State Treasury as other claims are paid. Any military stores belonging to this state which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the Governor or Adjutant General may prescribe by regulations or order; and the Adjutant General may sell or destroy as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this state, the sums realized from the sale thereof to be turned into the State Treasury, or he may in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the State Military Forces of this state.

## Acceptance and Expenditure of Public Funds; Minimum Wage; Regulations

Sec. 15. The Adjutant General may accept funds from the federal government, either directly or through another agency, or agencies of the state or political subdivisions thereof as gifts, grants, and transfers to be used for the purposes set out in such gifts, grants, or transfers for any legal purposes of his department. These funds may be deposited with the State Treasurer and are to be paid out by him on properly drawn warrants issued by the Comptroller of Public Accounts upon the request of the Adjutant General and approval of the Governor under regulations prescribed by the Comptroller. Any employee whose salary is paid from these funds shall receive not less than the federal hourly minimum wage as provided in Section 206, the Fair Labor Standards Act of 1938, as amended.<sup>1</sup> The Adjutant General may make such regulations as he may deem necessary to control the receipt and disbursements of such funds.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1; Acts 1973, 63rd Leg., p. 722, ch. 312, § 1, eff. June 11, 1973.]  
<sup>1</sup> 29 U.S.C.A. § 206.

## Art. 5782. Commissioned Officers and Enlisted Men

## Term

Sec. 1. All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, must be citizens of Texas and the United States, shall take and subscribe the official oath and shall otherwise be qualified for such appointment under current laws and regulations of the United States. Such officers shall hold their positions until they shall have reached the age of sixty-four (64) years, unless sooner discharged or retired by reason of resignations, administrative regulations, individual application, disability or for cause to be determined by a court-martial or an efficiency board legally convened for that purpose.

## Commissions

Sec. 2. All commissions in the military service of this state shall be in the name and

by authority of the State of Texas, sealed with the state seal, signed by the Governor and attested by the Secretary of State, and recorded by the Adjutant General in a record book kept in his office for that purpose. No fee for issuing such commissions shall be charged or collected.

#### Brevet Commissions

Sec. 3. The Governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon the officers of the military service of this state for gallant conduct, or meritorious state military service of not less than twenty-five (25) years. He may also confer upon officers in active service in the military service of this state, who have previously served in the Forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States.

#### Company Funds

Sec. 4. The commanding officer of each company shall be the custodian of the company fund, and shall receive, safely keep, and properly disburse, as may be required by the Governor, all money that may be entrusted to his care, and to render on June 30 and December 31 of each year, to the Adjutant General, an itemized statement of all money by him received and disbursed for the preceding six (6) months.

#### Enlistments, Federal Laws and Regulations Applicable

Sec. 5. The terms of and requirements for enlistments and the qualifications for enlistment in the Texas National Guard shall be that prescribed by the laws of the United States.

#### Disqualifications

Sec. 6. No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this state or of the United States shall not be eligible for enlistment or re-enlistment, unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer of the organization who approved such expulsion or issued such dishonorable discharge.

#### Second Lieutenants

Sec. 7. The Governor may appoint and commission enlisted men, who have served well and faithfully in the State Military Forces of this state for a period of not less than twenty-five (25) years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list.

#### Assignment of Pay

Sec. 8. No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the Governor.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

#### Art. 5783. Service and Duties

##### Governor May Call

Sec. 1. When an invasion of, or an insurrection in, this state is made or threatened, or when the Governor may deem it necessary for the enforcement of the laws of this state, he shall call forth the State Military Forces or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient, he shall order out such part of the reserve militia as he may deem necessary.

##### Impending Riot

Sec. 2. When there is in any county, city or town in this state tumult, riot or body of men acting together by force with intent to commit felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this state, or when such tumult, riot, mob or other unlawful act or violence is threatened and that fact is made to appear to the Governor, he may issue his order to any commander of a unit of the State Military Forces of this state to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws, provided, whenever the necessity for military aid in preventing or suppressing such violence is immediate and urgent, and when it is impracticable to furnish such information to the Governor in time to secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor or of such city or town may call in writing for aid upon the commanding officer of the State Military Forces stationed therein, or adjacent thereto; and the civil officer making the call shall at once notify the Governor of his action.

##### Mobilization Order

Sec. 3. The officer to whom the order of the Governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the Governor of his action.

##### Commanding Officer's Duty

Sec. 4. When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions given in the presence of two (2) or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the

instructions received. The kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer.

#### State Military Forces

Sec. 5. The Governor may order the State Military Forces, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this state, or discharging other duties in connection with the execution of the law as the public interest or safety at any time may require.

#### Sale of Arms

Sec. 6. Whenever any part of the State Military Forces of this state is on active duty pursuant to the order of the Governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or gift of any said article so long as any of the troops remain on duty in such place, or in the vicinity where such place may be located.

#### Regular Training

Sec. 7. Officers and enlisted men of the State Military Forces of this state shall assemble for and undergo drill, instruction, parades, marches and such other training as may be authorized by Title 32, United States Code; provided, however, the Governor of Texas may limit or extend the nature or type of training prescribed therein and may provide for such other training as he may see fit.

#### Active State Service

Sec. 8. The Military Forces of this state, including the Texas State Guard, when called into active service of this state in time of war, insurrection, invasion or imminent danger thereof, or in the prevention thereof, or in preparation against the same, or under any other existing statutory or constitutional authority of this state, shall, during their time of service, be entitled to and shall receive the same pay as is now or may hereafter be established by the laws for Armed Forces of the United States; provided, however, that if such pay is less than the current state per diem, as authorized in the current appropriations act, then in that event, members of the Military Forces of this state ordered or called into the service of this state shall not receive less than the current state per diem rate for their state military service. This amount shall be an emolument for services and considered salary or base pay. Any food, shelter, or transportation furnished by the state in association with such active duty service shall not detract from or in any way lessen the amount of compensation to be received by the individual concerned. It is the intent of the Legislature to use the current state per diem as a reference point to the emo-

lument to be received in order that as inflation occurs, it will not be necessary to amend this statute to provide for increased compensation to offset the inflation.

#### Tax Exemptions

Sec. 9. (a) All officers and enlisted men of the State Military Forces of this state, who comply with their military duties as prescribed by this Chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of the public schools, and exemption from the payment of any road or street tax.

(b) The following affidavit, sworn to before a notary public or other person authorized to administer oaths in the State of Texas, shall be filed in the county tax assessor-collector's office to support exemption prescribed in the preceding subsection:

"I, \_\_\_\_\_, do hereby solemnly swear or affirm that I am a member in good standing of the State Military Forces of the State of Texas.

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

SEAL

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_ County,  
Texas"

#### Disabled Men

Sec. 10. (a) Every member of the Military Forces of this state who shall be wounded, disabled, or injured, or who shall contract any disease or illness, in line of duty while in the service of this state in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, or when participating in any training formation or activity under order of the commanding officer of his unit, or while traveling to or from his place of duty in such instances, shall be entitled to and shall receive, or be reimbursed for, hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of such wounding, disability, injury, disease or illness, and necessary transportation incident thereto so long as such wounding, disability, injury, disease or illness exists, and shall receive the same pay and allowance whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease or illness contracted, during the period of his disability but not for more than a total of twelve (12) months after the end of his tour of duty.

(b) A member of the Military Forces of the state who incurs a permanent disability while performing a military duty as provided in Subsection (a) of this section is entitled to receive a compensation based on a percentage of total disability. In addition to this compensa-

tion the disabled person shall be entitled to and shall receive or be reimbursed for hospitalization, rehospitalization, and medical and surgical care in a hospital or at his home as appropriate for the treatment of such wounding, disability, injury, disease or illness, and necessary transportation incident thereto for the duration of his disablement. The Adjutant General of Texas shall appoint at least five persons, including at least one officer of the Medical Corps, to a board of officers which shall determine the percentage of total disability and award compensation for the disability. A person who incurs a permanent disability as provided in this subsection is entitled to receive a compensation set by the board of officers of up to \$120 per month plus 12½ percent of the basic pay of the grade or rank held by that person at the time the disability was incurred. The board of officers shall review each award of compensation annually on a date set by the Adjutant General of Texas to determine whether each award of compensation should be continued, increased, reduced, or eliminated. Compensation under this subsection may not be awarded or paid until the provisions of Subsection (a) have been complied with.

(c) If a member of the Military Forces of the state dies as a result of injuries or disease incurred as provided in Subsection (a) of this section, his estate shall be entitled to any reimbursement for which the deceased would have been entitled and to his accrued pay and allowances and compensation or reimbursement for actual funeral expenses not to exceed the sum of Five Hundred Dollars (\$500). His surviving spouse is entitled to receive a compensation of \$120 per month plus 12½ percent of the basic pay established for the member of State Military Forces until the surviving spouse dies or remarries. If the surviving spouse remarries and there are surviving children, the children will receive compensation as follows:

- 1 child           \$77 per month to age 18 or when married or to age 21 if still in school
- 2 children       \$110 per month, equally divided, to age 18 or when married or to age 21 if still in school
- 3 children       \$143 per month, equally divided, to age 18 or when married or to age 21 if still in school
- More than 3 children   \$143 per month plus \$28 per month for each child in excess of 3, equally divided, to age 18 or when married or to age 21 if still in school.

If a member of the Military Forces of this state dies as a result of injuries or disease incurred as provided in Subsection (a) of this section and is not married but is survived by children under 18 years of age, the children are entitled to compensation as enumerated above. If the surviving spouse of the member

of the State Military Forces dies and there are children under age 18, the compensation for children as set forth in this section will be payable to the children or guardian. The compensation or reimbursement, as well as the cost of carrying out the other provisions of this section, shall be paid out of any funds in the State Treasury available to or appropriated for the use of the Military Forces of this state in the same manner provided for other expenditure of state funds; provided, however, that no compensation or reimbursement shall be paid in any case where the same is payable under the provisions of any federal law or regulation, and the claim results from activity related to the performance of duty or training in compliance with the provisions of federal law or regulations.

(d) The Adjutant General shall administer the provisions of this Act and shall prescribe such rules and regulations not inconsistent with law as may be necessary to carry out the provisions of this Act and the decision as to whether any wounding, disability, injury, disease, illness or death is in line of duty or as a result thereof, shall be made by the Adjutant General after proper investigation and hearing pursuant to such regulations as he may prescribe. Further, the Adjutant General shall have power to make interagency agreements or contracts with any agency of the state government to carry out the provisions of this Act.

Construction as Compensation for Services,  
Disabled Men

Sec. 11. The provisions of this Act shall in no wise be construed to be a gratuity but shall be construed to be compensation for services for which each member of the Military Forces of this state shall be deemed to have bargained for and considered as a condition of his enlistment and employment.

Transportation, Etc.

Sec. 12. When troops of this state are in active state duty status the state shall make suitable provisions for their pay, transportation, subsistence and quarters under such regulations as the Adjutant General may prescribe.

Exempt From Arrest

Sec. 13. (a) No person belonging to the Military Forces of this state shall be arrested while going on duty or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony or breach of the peace.

(b) This Article shall not be construed to prevent a peace officer from issuing a traffic summons or citation to appear in court at a subsequent date which shall not conflict with such member of the State Military Forces duty hours.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1; Acts 1967, 60th Leg., p. 166, ch. 87, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1133, ch. 252, § 1, eff. Aug. 30, 1971.]

## Art. 5784. Arms, Equipment, Etc.

## Private Use

Sec. 1. No officer or enlisted man of the State Military Forces having property in charge shall lend for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the Governor.

## Provided by State

Sec. 2. All organizations shall be provided by this state with such arms, equipment, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this Chapter. Each organization shall keep such property in proper repair and in good condition.

## Warrant for Seizure

Sec. 3. Whenever it comes to the knowledge of the Governor, on the affidavit of a credible person, that the persons having arms, equipment, or other military property issued by this state for the use of the military forces of this state without authority of law, fail or refuse to deliver up such property, he shall issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments, or other military property, and keep the same subject to the further order of the Governor. Any sheriff receiving such warrant shall without delay execute the same as directed; and in executing such warrant he may summon to his aid the power of the county and any command of the State Military Forces of this state that may be convenient.

## Sheriff to Collect Arms

Sec. 4. Each sheriff shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property when collected shall be kept safely subject to the order of the Governor, to whom a report of such collection shall be made. The official bond of sheriff's shall extend to and include the faithful performance of their duties under this and the preceding Sections.

## Exempt From Execution

Sec. 5. Arms, equipments, clothing or other military supplies issued by this state to organizations or members of the State Military Forces for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or any other legal proceedings.

## Governor to Draw Arms

Sec. 6. The Governor in his official capacity is authorized to draw from the United States Government all arms, equipment, munitions, or other military stores to which this state may, from time to time, be entitled, for the use of State Military Forces and may execute such bonds in the name of the state as

may be necessary or requisite to secure their issuance.

## Storing Arms

Sec. 7. The Governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this state, to be stored at such points as he may deem to the best interests of this state.

## Uniform

Sec. 8. The uniform for officers and enlisted men of the State Military Forces of this state shall be the same as that prescribed for the Armed Forces of the United States, with such modifications as the Governor may deem necessary from time to time. All uniforms and other military property issued by this state shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the Adjutant General may prescribe.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

## Art. 5785. Oaths

Those who are appointed, enlisted, or drafted in the active militia or State Military Forces shall take and subscribe an oath in the following form:

"I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the Governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the Military Forces of the State of Texas."

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

## Art. 5786. General Provisions

## Change of Venue

Sec. 1. Any officer or member of the Military Forces of this state, who is sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and the court in which suit is pending, upon the application of the person sued, shall remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant cannot have a fair and impartial trial before such court.

## Assistance

Sec. 2. Each Commissioners Court and the council or commission of each city or town in this state is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this state located in their respective counties and in or near their respective cities

or towns; not to exceed the sum of One Hundred Dollars (\$100) per month for such expenses from any one such court, council or commission for any one organization; and in addition, in behalf of their respective counties, cities or towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated. Administrative unit as referred to in this Section means a company or squadron size organization or a separately administered or located platoon or flight.

#### Right of Way on Street

Sec. 3. The commanding officer of any portion of the State Military Forces of this state, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield the right-of-way to such State Military Forces; provided, that the carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby.

#### Gambling, Etc.

Sec. 4. The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade, or drill under his command. And he may, in his discretion, abate as a common nuisance all such sales.

#### Insurrection

Sec. 5. Whenever any portion of the military forces of this state is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted may, by proclamation, declare the county or city in which the troops are serving, or any special portion thereof, to be in a state of insurrection.

#### Foreign Troops

Sec. 6. No armed military force from another state, territory or district shall be permitted to enter this state without the permission of the Governor, unless such force is a part of the United States Armed Forces.

Secs. 7, 8. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1; Acts 1965, 59th Leg., p. 1601, ch. 690, § 3.]

### Art. 5787. Veterans County Service Office

#### Veterans County Service Office

Sec. 1. (a) Creation, maintenance, salaries. The office of Veterans County Service Office is hereby created. When the Commissioners Court of a county shall determine that such an office is a public necessity in order that those residents of a county who have served in the armed forces may promptly properly and rightfully obtain the benefits to which they are entitled, it shall, by a majority vote of the full membership thereof, maintain and operate such an office and shall appoint a Veterans County Service Officer and such Assistant Veterans County Service Officers as shall be deemed necessary by the county Commissioners Court. Such Veterans County Service Officer and/or Assistant Veterans County Service Officers, shall receive a salary fixed by the county Commissioners Court, to be paid in equal monthly installments out of the general funds of the county and all salaries and travel expense, including all necessary expenses in connection with attendance of Service Officers schools and conferences of such Veterans County Service Officer and/or Assistant Veterans County Service Officers and all salaries of the personnel of such office and other expenses of such office shall be paid on order of the Commissioners Court; provided, however, that no salary paid to any such Veterans County Service Officer shall exceed the sum of Four Hundred and Seventy-five Dollars (\$475) per month and no salary paid to any such Assistant Veterans County Service Officer shall exceed the sum of Three Hundred and Fifty Dollars (\$350) per month; and provided further, that the population of the county, and the number of ex-service men and women in the county, shall definitely be taken into account in fixing the salary of the Veterans County Service Officer, and such Assistant Veterans County Service Officers as may be appointed.

(b) Appointment of officers, term, qualifications. Such Veterans County Service Officer and/or Assistant Veterans County Service Officers, shall, if so appointed, serve for the remainder of the current county fiscal year during which they are appointed and thereafter shall be appointed for and serve for, a term of two (2) years, unless sooner removed for cause by the appointing authority. Such Veterans County Service Officer and such Assistant Veterans County Service Officer shall be qualified by education and training for the duties of such office. They shall be experienced in the law, regulations, and rulings of the United States Veterans Administration controlling cases before them, and shall themselves have served in the active Military, Naval or other Armed Forces or Nurses Corps of the United States or Canada during the Spanish American War, World War I, World War II, the Korean

War (commonly referred to as the Korean Conflict or the Korean Police Action) or during the period from July 1953 through the Viet Nam conflict, for a period of at least four (4) months or, if less than four (4) months have a service-connected disability, and have been honorably discharged from such service, or a widowed Gold Star Mother or un-remarried widow of a serviceman or veteran whose death resulted from service, and shall have been given a certificate of approval by the Veterans Affairs Commission, and/or a letter of approval from the State Commander of a veterans organization chartered by Congress; provided however, that lack of such certificate or letter shall not disqualify a person otherwise qualified. A statement showing that applicant possess the above necessary qualifications shall be filed with the county Commissioners Court at or before the time said appointments are made, and the filing thereof shall be a condition precedent to such appointment.

(c) Duties, fees forbidden. The duty of the Veterans County Service Officer and/or the Assistant Veterans County Service Officer shall be to aid all residents of the county and/or counties providing for such officers who served in the Military, Naval, or other Armed Forces or Nurses Corps of the United States during any war or peacetime enlistment, and/or veterans and/or orphans and/or dependents in preparing, submitting and presenting any claim against the United States or any state, for compensation, hospitalization, insurance or other item or benefits to which they may be entitled under the existing laws of the United States, or of any state, or such laws as may hereafter be enacted, pertinent thereto. It shall also be their duty to defeat all unjust claims that may come to their attention. No fees, either directly or indirectly, for any service rendered by such Veterans County Service Officer and/or Assistant County Service Officer shall be charged of applicant, nor shall they permit the payment of any fee by applicant to any third person for services that might be rendered by them, nor seek to influence the execution of a power of attorney to one national service organization over that of another.

(d) Entry into records of institutions. Said officers shall be given official entry into records of the eleemosynary and penal institutions of the State of Texas under the rules and regulations of the Board of Control governing eleemosynary institutions, and under the rules and regulations of the Texas Department of Corrections governing the Texas Prison System, for the purpose of determining the status of any person confined therein in regard to any benefit to which such person may be entitled.

(e) Joint employment by two or more counties. The Commissioners Court of any county may make an arrangement or agreement with one or more other contiguous counties whereby all such counties, parties to the arrangement

or agreement, may jointly employ and compensate a Veterans County Service Officer under the provisions of this Act, in which event the amount of compensation which would be paid by each such county under said agreement and the travel and such other miscellaneous expenses authorized by the Commissioners Court which would be paid by each such county under said agreement, shall be expressly stipulated in said agreement and said office shall be established and said arrangement and agreement entered into and such officers appointed and employed by a majority vote of the full membership of the county Commissioners Court of the respective counties who are parties to said arrangement and agreement.

**Veterans Education; State Treasurer Authorized to  
Accept Funds from Veterans Administration;  
Disposition**

Sec. 2. Pursuant to and in compliance with Public Law 679, 79th Congress, to authorize the Veterans Administration, to reimburse state and local agencies for expenses incurred in rendering services in connection with the administration of certain training programs for veterans and for other purposes, the State Treasurer of the State of Texas is hereby authorized to accept such funds or moneys as may be tendered or granted by the Veterans Administration to the Adjutant General of the State of Texas for the use and benefit of the State Approval Agency for Veterans Education under Public Law 346 for salaries and traveling expense of supervisors, inspectors, and secretarial or administrative help, or for such other expenses as may be necessary in establishing the training program for veterans of World War II. When such funds or moneys are received by the State Treasurer, he shall deposit same to the credit of the State Approval Agency for Veterans Education under Public Law 346, Account in the General Revenue Fund of the state. In order that the Director, State Approval Agency for Veterans Education under Public Law 346, may establish the training program immediately, there is hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Fifty-five Thousand Dollars (\$55,000) to the Adjutant General for the use and benefit of the Director, State Approval Agency for Veterans Education under Public Law 346; and in addition thereto, any and all of such funds or moneys as may be received and deposited in the State Treasury from the Veterans Administration are hereby appropriated to the Adjutant General's Department for the use and benefit of the Director, State Approval Agency for Veterans Education under Public Law 346, for the specific purpose authorized by and under Public Law 679, 79th Congress. Any balance of the Fifty-five Thousand Dollars (\$55,000) herein appropriated at the end of the term for which the Veterans Administration program exists shall revert to the General Revenue of the State of Texas. Any and all moneys appropriated hereunder shall be disbursed

in compliance with the same rules, riders and limitations as control the disbursement of funds under the current Departmental Appropriation Bill.

Veterans Affairs Commission

Sec. 3. (a) Declaration of purpose: It is hereby declared that the purpose of this Act is to take care of the tremendous increase in veterans population in the State of Texas, which has resulted from the Spanish-American War, World War I, World War II and other wars in which residents of the state have participated, by giving proper care and assistance to Texas veterans of all wars.

(b) Creation, membership: There is hereby created and established by this Act, a Veterans Affairs Commission of the State of Texas. The Commission shall be composed of five (5) members who shall be appointed by the Governor, with the advice, consent and confirmation of the Senate. The members of the Commission and all male personnel are to be veterans of the Spanish-American War, World War I, World War II, or of other wars in which the United States participated. They shall have received honorable discharges from the service of the United States; shall be citizens and bona fide residents of the State of Texas, and at least three (3) members of the Commission shall have been finally separated from the service under honorable conditions as an enlisted man. No two (2) members of the Commission shall reside in the same Senatorial District, and not more than one (1) shall be from a Senatorial District composed of one (1) county. The Commission shall continue in office, as designated by the Governor at the time of appointment, through the last day of the second, fourth and sixth calendar years respectively following the effective date of this Act. The successors of members initially appointed shall be appointed for terms of six (6) years in the same manner as the members originally appointed under this Act, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. Each member shall serve without pay, except he shall be paid the sum of Twenty-Five Dollars (\$25) per diem for regular and called meetings of the Commission and shall be reimbursed for actual and necessary expenses incurred by him and authorized by the Commission.

(c) Duties. It shall be the duty of the Commission to:

(1) Make a compilation of the laws, federal, state and local, enacted for the benefit of members of the Armed Forces; for veterans and their families and dependents; collect data and information as to services and facilities available to veterans; to cooperate with veterans service agencies throughout the state; to inform

members of the Armed Forces, veterans, their families and dependents, and military and civilian authorities regarding the existence or availability of (i) educational training and re-training facilities; (ii) health, medical, rehabilitation and housing services and facilities; (iii) employment and re-employment services; (iv) provisions of federal, state and local laws affording rights, privileges, and benefits to members of the Armed Forces, veterans, their families, and dependents; and (v) other matters of similar, related or appropriate nature.

(2) Assist veterans and their families and dependents in presentation, proof and establishment of such claims, privileges, rights and other benefits as they may have under federal, state or local laws.

(3) Cooperate with all national, state and local governmental and private agencies securing services or any benefits to veterans, their families and dependents.

(4) Investigate abuses or exploitation of veterans, their families or dependents, to correct where possible, and to recommend legislation where necessary for full correction.

(5) Coordinate the services and activities of all state departments or divisions having services and resources affecting veterans, their families or their dependents.

(6) Cooperate with and assist in training of county service officers. No fees, either directly or indirectly, shall be charged applicant for any service rendered by the Veterans Affairs Commission, nor shall the Commission permit the payment of any fee by applicant to any third person for services that may be rendered.

(d) Organization, meeting, reports. The Commission shall, within thirty (30) days after its appointment, organize, adopt a seal and make such rules and regulations for its administration as it may deem necessary and may from time to time amend such rules and regulations. At the organization meeting, the Commission shall elect from among its members a chairman, a vice-chairman, and a secretary to serve for one (1) year, and annually thereafter shall elect such officers who shall serve until their successors are appointed and qualified. Three (3) members shall constitute a quorum and no action shall be taken by less than a majority of the Commission. The Commission shall hold regular meetings at least once in every three (3) months. At the initial meeting, the regular meeting dates and places shall be fixed. Special meetings may be called as provided by the rules and regulations. The Commission shall on or about December first of each year make a written report to the Governor giving a summary of its proceedings during the preceding fiscal year and such other information deemed necessary or useful. The

fiscal year of the Commission shall conform to the fiscal year of the state.

(e) Offices and expenses. Suitable offices and office equipment shall be provided by the State of Texas for the Veterans Affairs Commission in the City of Austin. The Commission may incur the necessary expenses for office furniture, stationery, printing, incidentals, and other expenses necessary to perform its work, and sufficient office personnel, stenographers, typists, and clerical help shall be employed to maintain the efficient operation of the office. The Commission shall be authorized to pay the expenses provided in paragraph (e) hereof from the appropriation hereinafter transferred to the Commission.

(f) Executive Director. The Commission shall employ a well-qualified Executive Director. He shall be appointed with due regard to his fitness by past experience and training and should be well-qualified to administer the policies of the Commission. He shall devote his entire time to the duties of the office, as prescribed by this Act, and shall not actively engage or be employed in any other business, vocation, or profession while serving as Executive Director. The Director shall be responsible for placing into operation the policies and instructions promulgated by the Veterans Affairs Commission, and shall serve as Executive Officer of the Commission, but he shall not have the power to vote. The Director shall be in charge of the offices of the Commission, shall direct the paid personnel of the Commission, and be responsible to the Commission for all reports, data, and so forth, required by the Commission.

(g) Assistant Directors. There shall be employed by the Commission, upon recommendation of the Executive Director, two (2) assistant directors who shall, by training and experience, be well-qualified to perform the duties assigned to them, and one (1) of whom must have been finally separated from the service under honorable conditions as an enlisted man. One (1) assistant director, in addition to other duties, which may be assigned to him by the Commission, shall subject to the supervision and control of the Commission and the Executive Director, be in charge of claims and shall assist in such manner as the Commission may deem proper in the coordination of veterans claims work throughout the state. One (1) assistant director, in addition to such other duties as may be assigned to him by the Commission, shall be in charge of records, contracts, and coordination of the various agencies pertaining to veterans affairs.

(h) State Approval Agency for Veterans Education. The State Approval Agency for Veterans Education, as established by the Governor, under terms of United States Public Law 346, Acts of the 78th Congress and Public Law 679, Acts of the 79th Congress, shall be attached to the Veterans Affairs Commission for administration only. Policies for the adminis-

tration of the training program for veterans have been established in a contract signed by the Governor, in behalf of the state, and the Veterans Administration of the United States. Under the terms of this agreement, the Director of this Agency is named by the Governor. The Agency is hereby attached to the Veterans Affairs Commission for administration purposes only. Under agreement with the Veterans Administration, the government of the United States pays salaries and travel expenses of personnel engaged in the training program. Incidental expenses for the operation of the Agency, such as postage, stationery, telephone and telegraph, and other contingent expenses, shall be paid by the Veterans Affairs Commission from funds appropriated for the purpose by the Legislature.

(i) Powers of Director and assistants. The Executive Director, and the assistant directors to be appointed under this Act shall have power to administer oaths, certify under the seal of the Commission to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

(j) Term of Director and assistants. The Director and the assistant directors and all representatives and employees appointed under this Act shall serve subject to the will of the Commission.

(k) Intent. It is the intent and purpose of this Act that the functions heretofore performed by the State Service Office of the State of Texas shall be absorbed by the Veterans Affairs Commission, as created herein.

(l) Appropriations. At such time as the functions and services now performed by the Veterans State Service Officer, are taken over and absorbed by the Veterans Affairs Commission hereby created, then all unexpended balances in all funds heretofore and hereafter appropriated to the Veterans State Service Office are hereby reappropriated to the Veterans Affairs Commission, to be expended in accordance with the provisions of the departmental appropriation bill, making the appropriation to the Veterans State Service Office provided that the Veterans Affairs Commission shall have the authority to change within the total amounts appropriated herein the designation of service officers and assistant service officers and their reassignment to conform with any changes in the location of Veterans Administration regions, veterans hospitals, and similar establishments, and be it further provided, that the assistant service officers designated in the available appropriation may be authorized to handle any and all veterans claims as ordered by the Veterans Commission.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1; Acts 1965, 59th Leg., p. 604, ch. 298, § 1; Acts 1967, 60th Leg., p. 282, ch. 133, §§ 1, 2, eff. May 5, 1967.]

## Art. 5788. Texas Code of Military Justice

## PART I. GENERAL PROVISIONS

## Definitions

Sec. 101. In this Act, unless the context otherwise requires:

(1) "State military forces" means the National Guard of the state, as defined in Section 101(3) of Title 32, United States Code, the organized Naval Militia of the state and any other militia or military forces organized under the laws of the state.

(2) "Officer" means commissioned or warrant officer.

(3) "Commissioned Officer" includes a commissioned warrant officer of the naval militia.

(4) "Commanding Officer" includes only commissioned officers.

(5) "Superior Commissioned Officer" means a commissioned officer superior in rank or command.

(6) "Enlisted member" means a person in an enlisted grade.

(7) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) "Rank" means the order of precedence among members of the state military forces.

(9) "Active state duty" means all duty authorized under the Constitution and laws of the State of Texas and all training authorized under Title 32, United States Code.

(10) "Judge Advocate" means any commissioned officer who is a member of the bar of the highest court of this state, who is designated to perform legal duties of a command.

(11) "Military Court" means a court-martial, a court of inquiry, or a provost court.

(12) "Law officer" means an official of a general court-martial detailed in accordance with Section 505 of this Act.

(13) "Law specialist" means a commissioned officer of the naval militia of the state designated for special duty (law).

(14) "Legal officer" means any commissioned officer of the organized naval militia of the state designated to perform legal duties for a command. He shall be a member of the State Bar of Texas.

(15) "State judge advocate" means the commissioned officer responsible for supervising the administration of military justice in the state military forces.

(16) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, or any person who has an interest other than an

official interest in the prosecution of the accused.

(17) "Military" refers to any or all of the armed forces.

(18) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(19) "May" is used in a permissive sense.

(20) "Shall" is used in an imperative sense.

(21) "Code" means this Act.

## Persons Subject to This Code

Sec. 102. This Code applies to all members of the state military forces who are not in federal service.

## Jurisdiction to Try Certain Personnel

Sec. 103. (a) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 708, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from state military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

## Dismissal of Commissioned Officer

Sec. 104. (a) If any commissioner officer, dismissed by order of the Governor, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the Governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any Statute of Limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused he shall retain his status in the Texas Military Forces.

(b) If the Governor fails to convene a general court-martial within six (6) months from the presentation of an application for trial under this Code, the Adjutant General of Texas, or his designee, acting on behalf of the Governor, shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this Code, the Governor alone may reappoint the officer to such commissioned grade and with such rank as, in the

opinion of the Governor, that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(d) If an officer is discharged from the state military forces by administrative action or by board proceedings under law, he has no right to trial under this Section.

#### Territorial Applicability of the Code

Sec. 105. (a) This code applies throughout the state. It also applies to all persons otherwise subject to this Code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this Code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

#### Judge Advocates and Legal Officers

Sec. 106. (a) The Governor, on the recommendation of the Adjutant General, shall appoint a commissioned officer of the state military forces as State Judge Advocate. To be eligible for appointment, a commissioned officer must be a member of the bar of the highest court of the State of Texas and must have been a member of the bar of the state for at least five (5) years.

(b) The Adjutant General may appoint as many judge advocates as he considers necessary. To be eligible for appointment a judge advocate must be a commissioned officer of the state military forces and a member of the bar of the highest court of the State of Texas.

(c) The State Judge Advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their judge advocates or legal officers in matters relating to the administration of military justice; and the judge advocate or legal officer of any command is entitled to communicate directly with the judge advocate or legal officer of a superior or subordinate command, or with the State Judge Advocate.

(e) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as Judge Advocate or

legal officer to any reviewing authority upon the same case.

## PART II. APPREHENSION AND RESTRAINT

### Apprehension

Sec. 201. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this Code, or by regulations issued under it, to apprehend persons subject to this Code, any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

### Apprehension of Deserters

Sec. 202. Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces.

### Imposition of Restraint

Sec. 203. (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code or through any person authorized by this Code to apprehend persons. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) This Section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

## Restraint of Persons Charged With Offenses

Sec. 204. Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

## Confinement in Jails

Sec. 205. Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil jails.

## Reports and Receiving of Prisoners

Sec. 206. (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, designated under Section 205 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper or officer of a city or county jail or of any other jail, designated under Section 205 of this Code, to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

## Punishment Prohibited Before Trial

Sec. 207. Subject to Section 803, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

## Delivery of Offenders to Civil Authorities

Sec. 208. (a) Under such regulations as may be prescribed under this Code a person subject to this Code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under Section 208 is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for his of-

fense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

## PART III. NON-JUDICIAL PUNISHMENT

## Commanding Officer's Non-Judicial Punishment

Sec. 301. (a) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this Article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, trial by court-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this Article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general or flag rank in command may delegate his powers under this Article to a principal assistant.

(b) Subject to subsection (a) of this Section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) upon officers of his command;

(A) restriction to certain specified limits with or without suspension from duty, for not more than thirty (30) consecutive days;

(B) if imposed by the Governor, the commanding officer of a force of the state military forces or the commanding general of a division or a wing;

(i) arrest in quarters for not more than thirty (30) consecutive days;

(ii) fine or forfeiture of pay and allowances for not more than Seventy-five Dollars (\$75);

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three (3) months;

(2) upon other personnel of his command;

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than three (3) consecutive days;

(B) correctional custody for not more than seven (7) consecutive days.

(i) fine or forfeiture of pay and allowances for not more than Ten Dollars (\$10);

(C) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(D) extra duties including fatigue or other duties, for not more than thirty (30) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;

(E) restriction to certain specified limits, with or without suspension from duty for not more than thirty (30) consecutive days;

(F) detention of not more than fourteen (14) days pay;

(G) if imposed by an officer of the grade of major or lieutenant commander, or above;

(i) the punishment authorized under subsection (b)(2)(A);

(ii) correctional custody for not more than thirty (30) consecutive days;

(iii) fine or forfeiture of pay and allowances for not more than Seventy-five Dollars (\$75).

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(v) extra duties, including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive and for not more than two (2) hours per day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than sixty (60) consecutive days;

(vii) detention of not more than one-half ( $\frac{1}{2}$ ) of one (1) months pay per month for three (3) months.

Detention of pay shall be for a stated period of not more than one (1) year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two (2) or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In

addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection "correctional custody" is the physical restraint of a person during duty or non-duty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) as the Governor may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b) or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to fine or forfeiture or detention of pay.

When mitigating:

- (1) arrest in quarters to restriction, or
- (2) extra duties to restriction,

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to fine, forfeiture or detention of pay, the amount of the fine, forfeiture or detention shall not be greater than the amount that could have been imposed initially under this Article by the officer who imposed the punishment mitigated.

(e) A person punished under this Article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) arrest in quarters for more than seven (7) days;
- (2) forfeiture of more than seven (7) days pay:

(3) reduction of one (1) or more pay grades from the fourth (4th) or a higher pay grade;

(4) extra duties for more than fourteen (14) days;

(5) restriction of more than fourteen (14) days pay;

(6) detention of more than fourteen (14) days pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this Article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Article, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this Article and may also prescribe that certain categories of those proceedings shall be in writing.

#### PART IV. COURTS-MARTIAL JURISDICTION

##### Courts-Martial of State Military Forces Not in Federal Service—Composition—Jurisdiction—Powers and Proceedings

Sec. 401. (a) In the state military forces not in federal service, there are general, special and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(b) The three (3) kinds of courts-martial are:

(1) General courts-martial, consisting of a law officer and not less than five (5) members;

(2) Special courts-martial, consisting of not less than three (3) members; and

(3) Summary courts-martial, consisting of one (1) commissioned officer.

##### Jurisdiction of Courts-Martial in General

Sec. 402. Each force of the state military forces has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

##### Jurisdiction of General Courts-Martial

Sec. 403. Subject to Section 402, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

(1) A fine of not more than Two Hundred Dollars (\$200);

(2) Forfeiture of pay and allowances;

(3) A reprimand;

(4) Dismissal or dishonorable discharge;

(5) Reduction of a non-commissioned officer to the ranks; or

(6) Any combination of these punishments.

##### Jurisdiction of Special Courts-Martial

Sec. 404. Subject to Section 402, special courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than One Hundred Dollars (\$100) for a single offense.

##### Jurisdiction of Summary Courts-Martial

Sec. 405. (a) Subject to Section 402, summary courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto unless under Section 301 he has been permitted and has elected to refuse punishment under that Section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under Section 301, trial shall be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than Twenty-five Dollars (\$25) for a single offense, to forfeiture of pay and allowances, and reduction of a non-commissioned officer to the ranks.

Sentences of Dismissal or Dishonorable Discharge to be Approved by the Governor

Sec. 406. In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor.

##### Complete Record of Proceedings and Testimony if Dishonorable Discharge or Dismissal Adjudged

Sec. 407. A dishonorable discharge or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

Confinement Instead of Fine

Sec. 408. In the militia or state military forces not in federal service a court-martial may, instead of imposing a fine, sentence to confinement for not more than one (1) day for each dollar of the authorized fine.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

Who May Convene General Courts-Martial

Sec. 501. In the militia or state military forces not in federal service general courts-martial may be convened by the Governor or by the Adjutant General under such regulations as the Governor may promulgate.

Special Courts-Martial of State Military Forces Not in Federal Service—Who May Convene

Sec. 502. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

Summary Courts-Martial of State Military Forces Not in Federal Service—Who May Convene

Sec. 503. (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

Who May Serve on Courts-Martial

Sec. 504. (a) Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer off or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on

general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial but he shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third ( $\frac{1}{3}$ ) of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Section, the word "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

(d) (1) When it can be avoided, no person subject to this Code may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade, the convening authority shall appoint him as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.

Law Officer of a General Court-Martial

Sec. 505. (a) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of the highest court of the state, and who is certified to be qualified for such duty by the State Judge Advocate. No person is eligible to act as law officer in a case if he is an accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer may not consult with the members of the court, other than on the form of the findings as provided in Section 704, except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

## Detail of Trial Counsel and Defense Counsel

Sec. 506. (a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a person who is a member of the bar of the highest court of the state; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate.

(c) In the case of a special court-martial:

(1) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(2) If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must be a person similarly qualified.

## Detail or Employment of Reporters and Interpreters

Sec. 507. Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

## Absent and Additional Members

Sec. 508. (a) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five (5) members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five (5) members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three (3) members, the trial may

not proceed unless the convening authority details new members sufficient in number to provide not less than three (3) members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

## PART VI. PRE-TRIAL PROCEDURE

## Charges and Specifications

Sec. 601. (a) Charges and specifications shall be signed by a person subject to this Code under oath before a person authorized by this Code to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

## Compulsory Self-Incrimination Prohibited

Sec. 602. (a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

## Investigation

Sec. 603. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this Section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Section are binding on all persons administering this Code but failure to follow them does not divest a military court of jurisdiction.

#### Forwarding of Charges

Sec. 604. When a person is held for trial by general court-martial the commanding officer shall, within eight (8) days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the Governor. If that is not practicable, he shall report in writing to the Governor the reasons for delay.

#### Advice of Judge Advocate and Reference for Trial

Sec. 605. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this Code and is warranted by evidence.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

#### Service of Charges

Sec. 606. The trial counsel to whom court-martial charges are referred for trial shall

cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objections, be brought to trial before a general court-martial within a period of five (5) days after the service of charges upon him, or before a special court-martial within a period of three (3) days after the service of charges upon him.

## PART VII. TRIAL PROCEDURE

### Governor May Prescribe Rules

Sec. 701. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State of Texas, but which may not be contrary to or inconsistent with this Code.

### Unlawfully Influencing Action of Court

Sec. 702. No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

### Duties of Trial Counsel and Defense Counsel

Sec. 703. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State of Texas, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 506. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the con-

tents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 506, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 506, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

#### Sessions

Sec. 704. Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

#### Continuances

Sec. 705. A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

#### Challenges

Sec. 706. (a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one (1) person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one preemptory challenge, but the law officer may not be challenged except for cause.

#### Oaths

Sec. 707. The law officer, interpreters, and in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully, as follows:

(a) Court members:

"You, \_\_\_\_\_, do swear (or affirm) that you will faithfully perform all the du-

ties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the custom of war in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Law officer:

"You, \_\_\_\_\_, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as law officer of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the custom of war in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(c) Trial Counsel:

"You, \_\_\_\_\_ and \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(d) Defense Counsel:

"You, \_\_\_\_\_ (and) \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

## (f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the judge advocate in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

## (g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

## Statute of Limitations

Sec. 708. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Section, a person charged with desertion in time of peace or with the offense punishable under Section 1041 is not liable to be tried by court-martial if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under Section 301 if the offense was committed more than two (2) years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 301.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Section.

## Former Jeopardy

Sec. 709. (a) No person may be tried a second time in any military court of the State of Texas for the same offense.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.

## Pleas of the Accused

Sec. 710. If an accused arraigned before a court-martial makes an irregular pleading, or

after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

## Opportunity to Obtain Witnesses and Other Evidence

Sec. 711. (a) The trial counsel, the defense counsel, accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The president of a court-martial or a summary court officer may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) Issue a subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as described by the laws of the state.

## Refusal to Appear or Testify

Sec. 712. Any person not subject to this Code who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses, said fees to be paid by the Adjutant General's Department as hereinafter provided; and

(3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the state and may be punished by fine not to exceed One Hundred Dollars (\$100) or confinement not to exceed thirty (30) days in jail, or by both fine and confinement, and such witness may be prosecuted in the proper county court.

## Contempts

Sec. 713. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for three (3) days or a fine of One Hundred Dollars (\$100), or both.

## Depositions

Sec. 714. (a) At any time after charges have been signed, as provided in Section 601, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred (100) miles from the place of trial or hearing;

(2) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown

## Admissibility of Records of Courts of Inquiry

Sec. 715. (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses and all constitutional rights in all courts of inquiry before such evidence shall be admissible.

## Voting and Rulings

Sec. 716. (a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial or by the president of a special court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the law officer or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 717 beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial, shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

## Number of Votes Required

Sec. 717. (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

#### Court to Announce Action

Sec. 718. A court-martial shall announce its findings and sentence to the parties as soon as determined.

#### Record of Trial

Sec. 719. (a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable, the record shall be authenticated by two (2) members. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the Governor may by regulation prescribe.

(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court-martial is not required by subsection (a), but has been made, the accused may buy such a record under such regulations as the Governor may prescribe.

### PART VIII. SENTENCES

#### Cruel and Unusual Punishments Prohibited

Sec. 801. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

#### Maximum Limits

Sec. 802. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this Code nor limits prescribed by the Governor of the State of Texas.

#### Effective Date of Sentences

Sec. 803. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Regulations prescribed by the Governor may provide that sentences of confinement may not be executed until approved by designated officers.

(c) All other sentences of courts-martial are effective on the date ordered executed.

#### Execution of Confinement

Sec. 804. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize to act under Section 205 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

### PART IX. REVIEW OF COURTS-MARTIAL

#### Execution of Sentence; Suspension of Sentence

Sec. 901. Except as provided in Sections 407 and 907 of this Code, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him. He shall approve the sentence or such part, amount, or commuted form of the

sentence as he sees fit, and may suspend the execution of the sentence as approved by him.

#### Initial Action on the Record

Sec. 902. After trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the Governor.

#### Same General Court-Martial Records

Sec. 903. The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

#### Reconsideration and Revision

Sec. 904. (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

- (1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;
- (2) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Section of this Code; or
- (3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

#### Rehearings

Sec. 905. (a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no

sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

#### Approval by the Convening Authority

Sec. 906. In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

#### Review of Records; Disposition

Sec. 907. (a) If the convening authority is the Governor, his action on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a), if the sentence of a special court-martial is approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the State Judge Advocate for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(d) The State Judge Advocate shall review the record of trial in each case sent to him for review as provided under subsection (b). If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate is limited to questions of jurisdiction.

(e) The State Judge Advocate shall take final action in any case reviewable by him.

(f) In a case reviewable by the State Judge Advocate under this Section, the State Judge Advocate may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support

the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(g) In a case reviewable by the State Judge Advocate under this Section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(h) The State Judge Advocate may order one or more boards of review each composed of not less than three (3) commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a bad conduct discharge, referred to it by the State Judge Advocate. Boards of review have the same authority on review as the State Judge Advocate has under this Section.

#### Error Law; Lesser Included Offense

Sec. 908. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense.

#### Review Counsel

Sec. 909. (a) Upon the final review of a sentence of a general court-martial or of a sentence to a bad conduct discharge, the accused has the right to be represented by counsel before the reviewing authority, before the judge advocate or legal officer, as the case may be, and before the State Judge Advocate.

(b) Upon the request of an accused entitled to be so represented, the State Judge Advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in Section 506, if available, to represent the accused before the reviewing authority, before the judge advocate or legal officer, as the case may be, and before the State Judge Advocate, in the review of cases specified in subsection (a) of this Section.

(c) If provided by him, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the judge advocate or legal officer, as the case may be, and before the State Judge Advocate.

#### Vacation of Suspension

Sec. 910. (a) Before the vacation of the suspension of a special court-martial sentence which is approved includes a bad conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a

hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (a) of this Section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

#### Petition For a New Trial

Sec. 911. At any time within two (2) years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable or bad conduct discharge, the accused may petition the Governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

#### Remission or Suspension

Sec. 912. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

#### Restoration

Sec. 913. (a) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable or bad conduct discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable tables of

organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

#### Finality of Proceedings, Findings, and Sentences

Sec. 914. The proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this Code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this Code, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Section 911 of this Code.

### PART X. PUNITIVE ARTICLES

#### Persons to be Tried or Punished

Sec. 1001. No person may be tried or punished for any offense provided for in Sections 1002-1045 of this Code, unless it was committed while he was in a duty status.

#### Principals

Sec. 1002. Any person subject to this Code who:

- (1) Commits an offense punishable by this Code, or aids, abets, counsels, commands or procures its commission; or
- (2) Causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

#### Accessory After the Fact

Sec. 1003. Any person subject to this Code, who knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

#### Conviction of Lesser Included Offense

Sec. 1004. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

#### Attempts

Sec. 1005. (a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

#### Conspiracy

Sec. 1006. Any person subject to this Code who conspires with any other person to commit an offense under this Code, shall if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

#### Solicitation

Sec. 1007. (a) Any person subject to this Code who solicits or advises another or others to desert in violation of Section 1010 of this Code or mutiny in violation of Section 1019 of this Code, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 1024 of this Code or sedition in violation of Section 1019 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

#### Fraudulent Enlistment, Appointment, or Separation

Sec. 1008. Any person who:

- (1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
- (2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

#### Unlawful Enlistment, Appointment, or Separation

Sec. 1009. Any person subject to this Code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

#### Desertion

Sec. 1010. (a) Any member of the state military forces who:

- (1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the State military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated;

is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

#### Absence Without Leave

Sec. 1011. Any person subject to this Code, who without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

#### Missing Movement

Sec. 1012. Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

#### Contempt Towards Officials

Sec. 1013. Any person subject to this Code who uses contemptuous words against the Governor of Texas, shall be punished as a court-martial may direct.

#### Disrespect Toward Superior Commissioned Officer

Sec. 1014. Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

#### Assaulting or Wilfully Disobeying Superior Commissioned Officer

Sec. 1015. Any person subject to this Code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while in the execution of his office; or

(2) Wilfully disobeys a lawful command of his commissioned officer;

shall be punished as a court-martial may direct.

#### Insubordinate Conduct Toward Warrant Officer, Noncommissioned Officer, or Petty Officer

Sec. 1016. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer, noncommissioned officer or petty officer, while that officer is in the execution of his office;

(2) Wilfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

#### Failure to Obey Order or Regulation

Sec. 1017. Any person subject to this Code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

#### Cruelty and Maltreatment

Sec. 1018. Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

#### Mutiny or Sedition

Sec. 1019. (a) Any person subject to this Code who:

(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place,

is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

**Resistance, Breach of Arrest, and Escape**

Sec. 1020. Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

**Releasing Prisoner Without Proper Authority**

Sec. 1021. Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

**Unlawful Detention of Another**

Sec. 1022. Any person subject to this Code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

**Noncompliance With Procedural Rules**

Sec. 1023. Any person subject to this Code who:

- (1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or
  - (2) Knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;
- shall be punished as a court-martial may direct.

**Misbehavior Before the Enemy**

Sec. 1024. Any person subject to this Code who before or in the presence of the enemy:

- (1) Runs away;
- (2) Shamefully abandons, surrenders, or delivers upon any command, unit, place, or military property which it is his duty to defend;
- (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) Casts away his arms or ammunition;
- (5) Is guilty of cowardly conduct;
- (6) Quits his place of duty to plunder or pillage;
- (7) Causes false alarms in the command, unit, or place under control of the armed forces of the United States or the state military forces;
- (8) Wilfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft, or

any other thing, which it is his duty to so encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief, and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

**Subordinate Compelling Surrender**

Sec. 1025. Any person subject to this Code who compels or attempts to compel the commander of any of the state military forces of this state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

**Improper Use of Countersign**

Sec. 1026. Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

**Forcing a Safeguard**

Sec. 1027. Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

**Captured or Abandoned Property**

Sec. 1028. (a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the State of Texas or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code who:

- (1) Fails to carry out the duties prescribed in subsection (a);
  - (2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
  - (3) Engages in looting or pillaging;
- shall be punished as a court-martial may direct.

**Aiding the Enemy**

Sec. 1029. Any person subject to this Code who:

- (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or
- (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or

holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court-martial may direct.

#### Misconduct of a Prisoner

Sec. 1030. Any person subject to this Code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

#### False Official Statements

Sec. 1031. Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

#### Military Property—Loss, Damage, Destruction, or Wrongful Disposition

Sec. 1032. Any person subject to this Code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of, any military property of the United States or of the State of Texas; shall be punished as a court-martial may direct.

#### Property Other Than Military Property—Waste, Spoilage or Destruction

Sec. 1033. Any person subject to this Code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial may direct.

#### Improper Hazarding of Vessel

Sec. 1034. (a) Any person subject to this Code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

#### Driving While Intoxicated or Driving While Under the Influence of a Narcotic Drug

Sec. 1035. Any person subject to this Code who operates any vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

#### Drunk on Duty—Sleeping on Post— Leaving Post Before Relief

Sec. 1036. Any person subject to this Code who is found under influence of intoxicating liquor or narcotic drugs while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

#### Dueling

Sec. 1037. Any person subject to this Code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

#### Malingering

Sec. 1038. Any person subject to this Code who for the purpose of avoiding work, duty or service in the State military forces:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct.

#### Riot or Breach of Peace

Sec. 1039. Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

#### Provoking Speeches or Gestures

Sec. 1040. Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

#### Perjury

Sec. 1041. Any person subject to this Code who in a judicial proceeding or in a court of justice conducted under this Code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

#### Frauds Against the Government

Sec. 1042. Any person subject to this Code: (1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the State of Texas, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State of Texas, or any officer thereof:

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State of Texas, or any officer thereof:

(A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; or

(B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements there contained and with intent to defraud the United States or the State of Texas;

shall, upon conviction, be punished as a court-martial may direct.

#### Larceny and Wrongful Appropriation

Sec. 1043. (a) Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind;

(1) With intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

#### Conduct Unbecoming an Officer and a Gentleman

Sec. 1044. Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

#### General Article

Sec. 1045. Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.

### PART XI. MISCELLANEOUS PROVISIONS

#### Courts of Inquiry

Sec. 1101. (a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this Code, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed in the division of military or naval affairs, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president.

If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

#### Authority to Administer Oaths

Sec. 1102. (a) The following members of the state military forces may administer oaths for the purpose of the administration of military justice and affidavits may be taken for those purposes before persons having the general powers of a notary public.

- (1) The State Judge Advocate, assistant state judge advocate, and all judge advocates;
- (2) All law specialists;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants and personnel adjutants;
- (5) All commanding officers of the naval militia;
- (6) All legal officers;
- (7) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (8) The president and the counsel for the court of any court of inquiry;
- (9) All officers designated to take a deposition;
- (10) All persons detailed to conduct an investigation; and
- (11) All other persons designated by regulations of the Governor.

(b) The signature without seal of any such person, together with the title of his office, is prima facie evidence of his authority.

#### Sections to be Explained

Sec. 1103. Sections 102, 103, 201-301, 504, 506, 702, 801, 1001-1043, and 1103-1105 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within thirty (30) days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this Code and of the regulations prescribed by the Governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

#### Complaints of Wrongs

Sec. 1104. Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the Governor or Adjutant General.

#### Redress of Injuries to Property

Sec. 1105. (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or

that his property has been wrongfully taken by members of the state military forces, he may subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this Code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right of appeal to the next higher commander.

#### Execution of Process and Sentence

Sec. 1106. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) When the sentence of a court-martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority; and such confinement shall be carried out as prescribed for confinement in jail by the Code of Criminal Procedure of this state.

#### Process of Military Courts

Sec. 1107. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is

sitting within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) The president of any court-martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants, of arrest and warrant of commitment.

#### Payment of Fines, Costs, and Disposition Thereof

Sec. 1108. (a) All fines and forfeitures imposed by general court-martial, shall be paid to the officer ordering such court, and/or to the officer commanding for the time being and by said officer, within five (5) days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(b) All fines and forfeitures imposed by a special or summary courts-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five (5) days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When the sentence of a court-martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten (10) days after the confirmation thereof, the Governor or officer ordering the court or the officer commanding for the time being, as the case may be; shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held, directing him to take the body of the person so convicted and confine him in the county jail for one (1) day for any fine not exceeding One Dollar (\$1) and one (1) additional day for every dollar above that sum, and one additional day for each dollar of cost.

#### Immunity for Action of Military Courts

Sec. 1109. No accused may bring an action or proceeding against the convening authority

or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

#### Presumption of Jurisdiction

Sec. 1110. The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

#### Delegation of Authority by the Governor

Sec. 1111. The Governor may delegate any authority vested in him under this Code, and may provide for the subdelegation of any such authority, except the power given him by Sections 406 and 501 of this Code.

#### Witnesses Expenses

Sec. 1112. (a) Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed Eight Dollars (\$8) per day for each actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive Eight Dollars (\$8) per day for each day actually in attendance upon the court, and Six Cents (.06¢) a mile for going from his place of residence to the place of trial or hearing, and Six Cents (.06¢) a mile for returning. Civilian witnesses will be paid by the Adjutant General's Department.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

#### Arrest, Bonds, Laws Applicable

Sec. 1113. (a) When charges against any person in the military service of this state are made to the Governor, or any officer autho-

rized to convene a court-martial for the trial of such person, and the Governor or such officer, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the Governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the Governor, or officer ordering the court, shall bring the person so charged before the court-martial for trial, or turn him over to whoever the order may direct; the Governor, or the officer issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the officer ordering the court-martial, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor.

(c) The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this chapter.

(d) A warrant of arrest issued by the Governor, or other officer authorized to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(e) Upon conviction of any person by a court-martial, all costs including the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpoenas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing

any process, subpoena, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this state. When the defendant is imprisoned for costs the Adjutant General shall pay said costs out of any fund that may be available.

(f) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this Chapter imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this Section shall be a misdemeanor offense punishable by a fine of not more than One Thousand Dollars (\$1,000) and by confinement of not less than six (6) months and not more than twelve (12) months in jail.

#### Expenses of Administration

Sec. 1114. The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice from any fund appropriated to the Adjutant General's Department.

#### Uniformity of Interpretation

Sec. 1115. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it, and so far as practical, to make that law uniform with the law of the United States.

#### Short Title

Sec. 1116. This Article may be cited as the "Texas Code of Military Justice."

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

### Art. 5789. Awards, Decorations and Medals

#### Effect of Enactment

Sec. 1. The enactment of these Sections of this Code shall hereby repeal all Resolutions of previous Legislatures pertinent to the awarding of decorations and awards to personnel of the National Guard, Air National Guard and Reserve of the State of Texas. It shall likewise repeal all general orders issued by the Adjutant General of Texas, pursuant to such Resolutions. It is further provided, however, that the enactment of this Code shall not affect in any manner the previous awarding of any awards, decorations or medals.

#### Texas Legislative Medal of Honor

Sec. 2. The Texas Legislative Medal of Honor shall be awarded to any member of the state military forces, who, by voluntary act or acts shall have distinguished himself conspicuously by gallantry and intrepidity at the risk of his life. The deed performed must have been one of personal bravery or self-sacrifice, so conspicuous as to clearly distinguish the individual for gallantry and intrepidity above his comrades and must have involved risk of life. Incontestable proof of the performance of the

service will be exacted and each recommendation for the award of the Texas Legislative Medal of Honor will be considered on the standard of extraordinary merit.

**Lone Star Medal of Valor**

Sec. 3. The Lone Star Medal of Valor shall be awarded to any member of the state military forces who distinguishes himself by specific acts of bravery or outstanding courage, or a closely related series of heroic acts performed within an exceptionally short period of time, which act or acts involve personal hazard or danger and the voluntary risk of life, and which acts result in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his comrades, or from other persons in similar circumstances. The required gallantry for award of the Lone Star Medal of Valor, while of lesser degree than that required for the award of the Texas Legislative Medal of Honor, must nevertheless have been performed with marked distinction.

(a) The Lone Star Distinguished Service Medal shall be awarded to any member of the state military forces who, while serving in any capacity with the state military forces, shall have distinguished himself by exceptionally outstanding achievement or service to the state in the performance of a duty of great responsibility.

**Award of Medals by Governor; Approval and Recommendation**

Sec. 4. The award of the Texas Legislative Medal of Honor shall be made by the Governor upon approval by the Texas Legislature by Concurrent Resolution. The award of the Lone Star Medal of Valor shall be made by the Governor upon recommendation of the Adjutant General of Texas.

(a) The award of the Lone Star Distinguished Service Medal shall be made by the Governor upon recommendation of the Adjutant General of Texas.

**Forwarding Recommendations; Endorsement by Adjutant General**

Sec. 5. Recommendations for award of either the Texas Legislative Medal of Honor or the Lone Star Medal of Valor shall be forwarded through military channels to the Texas Adjutant General. It shall be the privilege of any individual having personal knowledge of an act or achievement believed to warrant the award of either decoration to submit a recommendation in letter form to the Adjutant General, giving an account of the occurrence, and accompanying such recommendation with statements of eyewitnesses, extracts from official records, sketches, maps, diagrams or photographs so as to support and amplify the stated facts. Upon determination by the Adjutant General that any individual case meets the criteria prescribed for the awarding of the Texas Legislative Medal of Honor as prescribed in Section 2 of this Article, he shall by endorsement recommend to the Governor the awarding

of said Texas Legislative Medal of Honor in accordance with Section 4 of this Article.

(a) Recommendations for award of the Lone Star Distinguished Service Medal shall be forwarded through state military channels to the Texas Adjutant General. It shall be the privilege of any individual having personal knowledge of exceptional service or achievement believed to warrant the award of this decoration to submit in letter form to the Adjutant General, giving an account of the exceptional service or achievement, accompanying such recommendation with facts, extracts of official documents and photographs so as to support and amplify the stated facts. Upon determination by the Adjutant General that any individual case meets the criteria prescribed for the awarding of the Lone Star Distinguished Service Medal as prescribed in Section 3(a) of this Article, he shall by endorsement recommend to the Governor the awarding of the Lone Star Distinguished Service Medal in accordance with Section 4(a) of this Article.

**Design and Manufacture of Medals; Ribbons**

Sec. 6. (a) The Adjutant General of the State of Texas is hereby directed to design, and cause to be manufactured, the Texas Legislative Medal of Honor and the Lone Star Medal of Valor, and such other awards, decorations, medals and ribbons as this Statute gives him the right to award.

(b) The Adjutant General of Texas shall promulgate rules and regulations to prescribe when ribbons may be appropriately worn in lieu of medals, provided the ribbon symbolizes the appropriate medal.

(c) The Adjutant General of the State of Texas is hereby directed to design, and cause to be manufactured, the Lone Star Distinguished Service Medal.

**Rules and Regulations Pertaining to Awards, Decorations, Medals and Ribbons**

Sec. 7. The Adjutant General is hereby authorized to promulgate rules and regulations pertaining to the following awards, decorations, medals and ribbons:

(a) Texas Faithful Service Medal. It shall be awarded to any member of the state military forces who has completed five (5) consecutive years of honorable service therein, during which period he has shown fidelity to duty, efficient service and great loyalty to this state.

(b) Federal Service Medal. It shall be awarded to any person inducted into federal service from the state military forces, between June 15, 1940, and January 1, 1946; and after June 1, 1950; provided, that such federal service was for a period in excess of nine (9) months with the Armed Forces of the United States.

(c) Texas Medal of Merit. It may be presented to any member of the state mili-

tary forces who distinguishes himself through outstanding service, or extraordinary achievement, in behalf of the state, or the United States.

(d) Texas Outstanding Service Medal. It may be presented to any member of the state military forces whose performance has been such as to merit recognition for service performed in a superior and clearly outstanding manner.

#### Posthumous Awards

Sec. 8. Awards may be made following the decease of the person being honored in the same manner as they are made for the living person, except that the orders and citation will indicate that the award is being made posthumously.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 300, ch. 144, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 995, ch. 183, § 1, eff. May 13, 1971.]

Section 2 of the amendatory act of 1963 was a severability provision; section 3 thereof provided: "Sec. 3. Repealer. Title 94, Chapter 3, of the Civil Statutes of Texas, 1925, as amended prior to the 58th Legislature, is hereby repealed; and Acts, 51st Legislature, page 445, Chapter 239, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5790a); Acts, 41st Legislature, page 500, Chapter 238, Section 1, 1929 (compiled in Vernon's Annotated Civil Statutes as Article 5796a); Acts, 51st Legislature, page 1206, Chapter 613, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 1); Acts, 52nd Legislature, page 597, Chapter 351, Section 1, 1951, and Acts, 56th Legislature, page 23, Chapter 13, Section 1, 1959 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 2); Acts, 49th Legislature, page 16, Chapter 12, 1945 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 5); Acts 50th Legislature, page 365, Chapter 207, Section 1, 1947 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-3); Acts, 50th Legislature, page 728, Chapter 363, 1947 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-4); Acts, 40th Legislature, page 262, Chapter 183, Section 2, 1927 (compiled in Vernon's Annotated Civil Statutes as Article 5837a) Acts, 41st Legislature, Second Called Session, page 45, Chapter 29, 1929 (compiled in Vernon's Annotated Civil Statutes as Article 5837b); Acts, 55th Legislature, page 1360, Chapter 461, Section 2, 1957 (compiled in Vernon's Annotated Civil Statutes as Article 5845a); Acts, 55th Legislature, page 281, Chapter 130, Section 1, 1957; Acts 56th Legislature, page 488, Chapter 218, Section 1, (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 1); Acts 44th Legislature, page 462, Chapter 184, 1935; Acts, 45th Legislature, page 740, Chapter 366; Acts, 46th Legislature, page 487, Section 1, 1939 (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 4); Acts, 51st Legislature, page 467, Chapter 251, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 5); and Acts, 46th Legislature, page 494, 1939 (compiled in Vernon's Annotated Civil Statutes as Article 5890c) are hereby repealed and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only."

Arts. 5790 to 5890c. Repealed by Acts 1963, 58th Leg., p. 209, ch. 112, § 3; Acts 1965, 59th Leg., p. 1601, ch. 690, § 3

### CHAPTER THREE A. MISCELLANEOUS PROVISIONS

#### Article

5890d. Repealed.

5890e. State of Emergency; Police Power; Use of Militia.

Art. 5890d. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

### Art. 5890e. State of Emergency; Police Power; Use of Militia

#### Legislative Intent

Sec. 1. It is hereby declared to be the legislative intent to recognize the Governor's broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. It is also recognized that local governmental units may need to take emergency action during such time of impending and actual crisis and it is the legislative intent to provide the means whereby such local units of government may take steps to protect the public's lives and property, and maintain the operation of the government. The provisions of this Act shall be broadly construed to effectuate this purpose.

#### Definitions

Sec. 2. The following terms are defined for the purposes of this Act:

(a) "Orders," "rules," and "regulations" shall mean directives reasonably calculated to control effectively and terminate the crisis, disaster, rioting, catastrophe, or similar public emergency.

(b) "Promulgate" shall mean to announce publicly.

(c) "Any action" shall mean such measures as shall be reasonably calculated effectively to control and terminate the crisis, disaster, rioting, catastrophe, or similar public emergency.

(d) "Militia" shall mean the Active and Reserve Militia as defined by Article 5765, Revised Civil Statutes of Texas, 1925.

#### Proclamation; Orders, Rules and Regulations; Duration

Sec. 3. During time of riot or unlawful assembly by three or more persons acting together by use of force or violence or if a clear and present danger exists of the use of force or violence, or during time of natural disaster or man-made calamity, the Governor may proclaim a state of emergency and designate the area involved upon the application of the chief executive officer of a county, city, or local municipality; or upon the application of the governing body of a county, city, or local municipality. Following such proclamation, the Governor may promulgate such reasonable orders, rules, and regulations as he deems necessary to protect life and property, or to bring the emergency situation within the affected area under control, after reasonable notice of such orders, rules, and regulations is given in a paper of general circulation or through television or radio serving the affected area or by circulating notice or by posting signs at conspicuous places within the affected area. Such orders, rules, and regulations may provide for the control of traffic, including public and private transportation, within the affected area; designation of specific zones within the area in

which, under necessitous circumstances, the occupancy and use of buildings and vehicles may be controlled, control of the movement of persons or vehicles into, within, or from those designated areas; control of places of amusement, or assembly, and of persons on public streets and thoroughfares; establishment of curfews; control of the sale, transportation, and use of alcoholic beverages and liquors; control of the sale, carrying, and use of firearms or other dangerous weapons and ammunition; and the control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety. Such orders, rules, and regulations shall be effective from the time and in the manner prescribed in such orders, rules, and regulations and shall be made public prior to such time as provided herein. Such orders, rules, and regulations may be amended, modified, or rescinded, in like manner, from time to time by the Governor throughout the duration of the emergency, but in any event shall cease to be in effect 72 hours from the time of the proclamation, unless proclaimed for a shorter period or terminated at an earlier time by proclamation of the Governor. Such state of emergency, and all powers incident thereto, may be extended by proclamation of the Governor for as many successive like periods of not in excess of 72 hours each as may be reasonably necessary to protect the health, life, and property of the affected area and its inhabitants.

#### Duties of Law Enforcement Agencies

Sec. 4. When the Governor has issued a proclamation declaring that a state of emergency exists, it shall be the duty of all the law enforcement bodies of this state, whether state, county, city, or municipal, to cooperate in any manner requested by the Governor or his designated representative. It shall also be their duty to allow the use of such equipment and facilities as they may possess when the use is required by the Governor or his designated representative, provided that such use shall not substantially interfere with the normal duties of the law enforcement agency, if the agency is not located within an area designated by the Governor as an emergency area. It shall be the duty of any county, city, or municipal law enforcement agency to notify the Director of the Department of Public Safety in the event the local agency receives notice of any threatened or actual disturbance which indicates the possibility of serious domestic violence.

#### Militia Aid to Local Law Enforcement Agencies

Sec. 5. The chief executive officer of any county, city or municipality, or any governing body thereof, may request the Governor to provide militia forces to help bring under control conditions existing within their jurisdiction with which, in their judgment, their law enforcement agencies cannot cope without additional personnel. Upon receipt of such a request, the Governor may issue his order to any commander of any unit of the State Military

Forces of this state to appear at the time and place directed by the Governor to aid the civil authorities. When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions may be given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, the preservation of public peace and the protection of life and property; provided, however, the commanding officer of the State Military Forces shall exercise his discretion as to the proper method of practically accomplishing the instructions received.

#### Ordinances Providing for Declaration of State of Emergency

Sec. 6. Any city or town, including home-rule cities and those operating under the general law or special charters shall have the power to provide by ordinance, or by other orders of its governing body, for the declaration of a state of emergency during the time of riot or unlawful assembly by three or more persons acting together by use of force or violence, or if a clear and present danger exists of the use of force or violence, or during time of natural disaster or man-made calamity.

#### Local Powers During State of Emergency

Sec. 7. Such cities or towns shall have full power and authority to provide by ordinance for the exercise of all powers reasonably necessary to protect the health, security, peace, life and property of the city and its inhabitants, during the period of such civil emergency. Specifically, but not in limitation of said powers which said cities may exercise, said cities may provide by ordinance, after reasonable notice, having due regard to the circumstances and exigencies of the emergency at the time of said notice, given in a newspaper of general circulation or through television or radio serving the affected area or by circulating notice or by posting signs at conspicuous places within the affected area, the following:

(a) Imposition of a general or limited curfew regulating or prohibiting any person or persons from being or remaining, or loitering or congregating on any street, alley, park, public property; or any other place where they have no right or authority to be during said curfew.

(b) Limitation or prohibition of the sale or dispensing of beer, wine, liquor, and any and all other alcoholic beverages.

(c) Limitation or prohibition of the sale or dispensing of gasoline or other liquid flammable or combustible products, dynamite or other explosives, and firearms or ammunition.

(d) Limitation upon or prohibition against the operation of any establishment selling, distributing, dispensing, or giving

away any of the items enumerated in Subparagraphs (a), (b), and (c) hereinabove.

(e) Establishment of temporary, emergency housing for persons rendered homeless, or occupants of abodes not fit for human habitation, as a result of such natural disaster or man-made calamity, or for purposes of governmental operations, for not longer than three hundred sixty (360) consecutive days after commencement of such natural disaster or man-made calamity, or until termination of the emergency period by local governing body declaration, whichever first occurs, upon any and all lands to which such cities or towns have right of possession or custody, whether the same shall be deraigned from grantors, donors, or lessors by purchase, dedication, or otherwise, irrespective of local zoning ordinances, rules and regulations, or deed restrictions, effective at the time of or during the establishment of such housing.

(f) Upon finding by the local governing body of substantial disruption of the local (city or community) free, competitive market in the purchase or sale of herein-after designated classes of goods and services, promulgation of maximum retail prices chargeable or collectible in such cities or towns, for a period of not more than fifteen (15) days or until earlier termination of the subject emergency period by local governing body declaration, whichever first occurs, after the occurrence of a natural disaster or man-made calamity, on the purchase and sale of the following classes of goods and services, in whole or in part:

- (1) Groceries, beverages, toilet articles, and ice;
- (2) Construction and building materials and supplies, electrical and gas generating and transmission equipment, parts, and accessories;
- (3) Charcoal, briquettes, matches, candles, lamp illumination- and heat unit-carbides, dry batteries, light bulbs, flashlights, and hand lanterns;
- (4) Hand tools (manual and power), earth-moving equipment and machinery, automotive parts, supplies, and accessories;
- (5) Apartment, duplex, multi-family dwelling, rooming house, hotel and motel rentals, insofar as such regulations are not inconsistent with the National Housing Act, as amended, concerning Federally insured housing units;
- (6) Gasolines, diesel oils, motor oils, kerosenes, grease, and automotive lubricants;
- (7) Restaurant, cafeteria, and boarding-house meals;
- (8) Medicines, pharmaceuticals, medical instruments, equipment, and supplies;

(9) Blankets, quilts, bedspreads, bed linens, mattresses, bed springs, bedsteads, towels, and toilet paper.

No rule or regulation promulgated hereunder shall provide any maximum price for an item of goods or services enumerated above which is less than the arithmetically averaged, prevailing retail price for such item as of the date of the occurrence of such natural disaster or man-made calamity. Such prevailing retail price may be determined by statistical sampling as the local governing body may direct. Alternatively, however, the local governing body may set the maximum retail price for any or all items of goods and services enumerated above by declaring, in ordinance, that the price charged by the purveyor of such affected good or service within the jurisdictional limits of the local governing body on the said occurrence-date shall be the maximum retail price lawfully chargeable by the purveyor of such affected good or service. An added special transportation cost for any regulated goods may be permitted by the local governing body.

The local governing body promulgating such price maximums by declaring prevailing prices shall establish an appeals procedure whereby any person dissatisfied with such body's determination of any such price on the occurrence date is promptly afforded a public hearing and shall be permitted to present evidence of such price, be represented by counsel, and have access to all data and computations employed by the governing body in determining such price. Resort to such appeal shall be prerequisite to contest of the validity of such price determination in a court of law.

All district courts having jurisdiction within the county wherein such city or town is situated shall have concurrent jurisdiction of appeals under this Section's provisions for price regulation. The substantial evidence rule shall apply in all such cases. The burden of proof of the invalidity of such price determination shall rest upon the contestant.

In no event shall such city or town, its governing body, officers, employees, or agents be held pecuniarily liable for any losses or damages attributable to its regulation of prices hereunder.

In promulgating maximums hereunder, the declaration by the local governing body that the arithmetically averaged, prevailing price of any item charged on the occurrence-date in such town or city by the purveyors thereof shall be the maximum retail price chargeable by such purveyors for the period of price control shall be deemed sufficient for the invocation of the regulatory power herein provided.

Declaration in this manner, however, shall not preclude subsequent establishment of a higher maximum retail price dur-

ing the permissible regulatory period or the employment of a method of price calculation different from the method initially employed, so long as such method conforms to the terms of this Act.

(g) In the event of occurrence of a man-made calamity or natural disaster any local governing body whose territorial jurisdiction is affected thereby, under the terms of this Act, may remove, by ordinance or order, on one reading, the operation, in whole or in part, of the competitive bidding requirements of Article 2368a, Vernon's Texas Civil Statutes, and applicable local law, whether in Charter, ordinance, or order, for a period of not more than ninety (90) days after the calamity or disaster occurrence-date, provided, each such ordinance or order shall be preceded by final passage and approval of an ordinance or order of such local governing body declaring its finding of the existence of a prevalent man-made calamity or natural disaster, pursuant to the terms of this Act. Further provided, however, that, in the event of such action, the local governing body shall diligently solicit and procure, insofar as practicable, bids, quotations, or estimates of material, labor, and other costs for those purchases, goods, and works described in said Article 2368a, Vernon's Texas Civil Statutes, prior to entering into contract therefor and shall award such contract, if award be made, to the lowest and best bid, quotation, or estimate received.

#### Duration of Local State of Emergency

Sec. 8. The declaration of state of emergency by any city or town as provided for in this statute, except as otherwise expressly provided herein, shall automatically terminate at the end of seven (7) days after the time of declaration of said state of emergency, unless declared for a shorter period or terminated at an earlier time by the governing body of said city or town. Subject to the prior approval by the Governor, such state of emergency, and all powers incident thereto, may be extended by the governing body of said city or town for as many successive like periods of not in excess of seven (7) days after the time of declaration as may be reasonably necessary to protect the health, life, and property of the city and its inhabitants.

#### Subordination of Local Powers

Sec. 9. Action of any city or town under the provision of Sections 6, 7, or 8 shall be subject to action of the Governor under the provisions of Sections 3, 4, and 5.

#### Violations

Sec. 10. Any violations of the provisions of this Act or any orders, rules, or regulations or ordinances promulgated hereunder shall be (a) punishable as a misdemeanor and shall subject the offender to a fine of not more than Two Hundred Dollars (\$200) or not more than sixty (60) days incarceration, or both, upon conviction thereof, or (b) subject such violators to the processes of temporary restraining orders, temporary and permanent injunctions, as to such alleged violations, under the Rules of Civil Procedure of the State of Texas and applicable law. Such prosecutions for misdemeanor and suits for injunction may be instituted by the Governor or the local governing body in any court of competent jurisdiction within the State.

#### Repealer

Sec. 11. All laws in conflict herewith are hereby repealed to the extent of such conflict.

#### Severability

Sec. 12. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable. If any clause, sentence, paragraph, or section of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be unconstitutional and invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or section thereof so found unconstitutional and invalid.

[Acts 1969, 61st Leg., p. 2658, ch. 877, eff. June 21, 1969; Acts 1971, 62nd Leg., p. 2996, ch. 990, §§ 1 to 3, eff. Aug. 30, 1971.]

Sections 4 to 7 of the 1971 amendatory act provided: "Sec. 4. All Acts and governmental proceedings of cities and towns within the state included in disaster areas, as declared by the President of the United States, their governing bodies, officers, employees, contractors, and agents, performed in the year 1970 under expressed authority of Article 5890e aforesaid, are hereby in all respects validated as of the date of such Acts or proceedings.

"Sec. 5. All other provisions of Article 5890e, Vernon's Texas Civil Statutes, are hereby kept in full force and effect.

"Sec. 6. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable. If any section, paragraph, sentence, clause, phrase, or word of this Act shall, for any reason, be finally adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such final judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the section, paragraph, sentence, clause, phrase, or word thereof so found unconstitutional or invalid."

## CHAPTER FOUR. STATE NAVAL MILITIA [REPEALED]

Art. 5891. Repealed by Acts 1953, 53rd Leg., p. 23, ch. 14, § 1

## CHAPTER FOUR A. TEXAS NAVY

Art. 5891.1. Texas Navy, Incorporated

#### Legislative Findings

Sec. 1. Whereas the past governors of the State of Texas have, by proclamation, recog-

nized the value and necessity of preserving and promoting appreciation of the history of the Texas Navy and its heroic acts in establishing and defending the Republic of Texas; and whereas, by commissions issued by these past governors of the State of Texas, numerous admirals in the Texas Navy and honorary admirals in the Texas Navy have been commissioned; and whereas, the importance of these matters is recognized by the Legislature of the State of Texas, the legislature hereby finds that these activities need to be carried on on a coordinated basis.

**Texas Navy, Incorporated; Nonprofit Corporation**

Sec. 2. The Texas Navy, Incorporated, a corporation created under the Texas Non-Profit Corporation Act is hereby designated as the official body to conduct the affairs of the Texas Navy as provided herein.

**Duties and Functions**

Sec. 3. The Texas Navy, Incorporated, shall have the duty of assisting in the preservation and promotion of the history of the Texas Navy and of the water resources of this state. Among the objectives to be sought in the carrying out of these duties shall be to promote and advertise the historic character and heroic acts of the Texas Navy; to promote travel by visitors to and within Texas to historical sites and areas in which the Texas Navy operated; to conduct, in the broadest sense, a public relations campaign to create a responsible and accurate image of Texas; to encourage Texas communities, organizations, and individuals, as well as governmental entities, to participate with actions and money in pursuit of these objectives; and to promote and assist in the organization of the admirals of the Texas Navy, heretofore and hereinafter commissioned, in establishing local groups, units, or stations of the Texas Navy.

**Board of Directors; Members; Terms of Office**

Sec. 4. Two members of the board of directors of The Texas Navy, Incorporated, shall be appointed by the Governor of the State of Texas. One additional member of this board of directors shall be appointed by the Speaker of the House of Representatives of the State of Texas, and one additional member shall be appointed by the Lieutenant Governor of the State of Texas. The terms of office of each of these directors shall be for two years and shall

run concurrently with the terms of office of the other members of the board of directors of the corporation, as specified in the articles of incorporation or bylaws of said corporation.

**State Funds**

Sec. 5. No state funds shall be required for the financing or carrying out of the duties of The Texas Navy, Incorporated.

[Acts 1973, 63rd Leg., p. 218, ch. 98, eff. Aug. 27, 1973.]

Section 6 of the 1973 Act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**CHAPTER FIVE. TEXAS DEFENSE  
GUARD [REPEALED]**

Art. 5891a. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

Art. 5891b. Expired

**CHAPTER FIVE A. SECURITY  
PERSONNEL [REPEALED]**

Art. 5891A-1. Repealed by Acts 1971, 62nd Leg., p. 3323, ch. 1024, art. 1, § 3, eff. Sept. 1, 1971

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

The repealed article authorized security officers at private institutions of higher education, and was derived from Acts 1969, 61st Leg., p. 2523, ch. 844, § 3.

See, now, Education Code, § 51.212.

Art. 5891A-2. Repealed by Acts 1971, 62nd Leg., p. 3363, ch. 1024, art. 2, § 48, eff. Sept. 1, 1971

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

Article 5891A-2 authorizing employment of school security personnel, and enacted by Acts 1971, 62nd Leg., p. 2426, (H.B. 1007) ch. 774, eff. June 8, 1971, was codified by Acts 1971, 62nd Leg., p. 3356, ch. 1024, art. 2, § 32, as Education Code, § 21.308.

**CHAPTER SIX. TEXAS STATE GUARD  
RESERVE CORPS [REPEALED]**

Art. 5891c. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

## TITLE 95

### MINES AND MINING

#### 1. COMMISSIONER OF LABOR STATISTICS

##### Article

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#### 1. COMMISSIONER OF LABOR STATISTICS

##### Art. 5892. Commissioner of Labor Statistics; Rights and Duties Transferred to

The State Mining Board and the office of State Mining Inspector are abolished, and the rights and duties of the State Mining Board and the State Mining Inspector are transferred to the Commissioner of Labor Statistics. The Commissioner of Labor Statistics shall enforce the provisions of this title, and the terms "State Mining Inspector," "mine inspector," and "inspector" whenever used in this Title shall mean the Commissioner of Labor Statistics or his agent.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 30, ch. 24, § 1.]

Arts. 5893 to 5900. Repealed by Acts 1953, 53rd Leg., p. 30, ch. 24, § 2

#### 2. MINING REGULATIONS

##### Art. 5901. Shafts, Cages and Passways

Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this and the thirteen succeeding articles. At the bottom of each shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. [Acts 1925, S.B. 84.]

##### Art. 5901a. Shafts, Cages and Passways

Any shaft in process of sinking, and any opening projected for the purpose of mining

coal of all kinds shall be subjected to the provisions of this and the twelve succeeding articles. At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice can not be distinctly heard there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope in each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. Every mine shall be supplied with props and timbers of suitable length and size, and if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. All openings connected with worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbled and blocked off from the operative portions thereof so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines.

[1925 P.C.]

#### Art. 5901b. Escapement Shaft

No owner, agent, lessee, receiver or operator of any mine in this State shall employ any person or persons in said mine for the purpose of working therein unless there are in connection with every seam or stratum of coal or ore

worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets safe and distinct means of ingress and egress shall at all times be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances by which the employes of the mine may readily escape in case of accident. In slopes used as haulage roads where the dip or incline is ten degrees or more there must be provided a separate traveling way which shall be maintained in a safe condition for travel and keep free from dangerous gases. The time which shall be allowed for completing such escapement shaft or opening shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope for sale or use. Any person, owner, agent, lessee, receiver or operator of any mine who shall violate or suffer or permit the violation of any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, and each day such violation continues shall be a separate offense.

[1925 P.C.]

#### Art. 5902. Props and Timbers

Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed.

[Acts 1925, S.B. 84.]

#### Art. 5903. Abandoned Workings

All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbled and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines.

[Acts 1925, S.B. 84.]

#### Art. 5904. Ventilation

Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the

foot of the downcast; and this quantity may be increased at the discretion of the inspector whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided so as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stables shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his refusal or neglect to act promptly, the inspector may order the endangered men out of the mine.

[Acts 1925, S.B. 84.]

#### Art. 5904a. Ventilation

Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder, smoke and deleterious air of any kind.

The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

The main current of air shall be so split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and upon his or their refusal or neglect to act promptly the inspector may order the endangered men out of the mine.

[1925 P.C.]

#### Art. 5905. Cut-Throughs

The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with.

[Acts 1925, S.B. 84.]

#### Art. 5905a. Cut-Throughs

The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation, and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article he shall order the workmen in such places to cease work at once until the law is complied with.

[1925 P.C.]

#### Art. 5906. Notice of Fire Damp

Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface.

[Acts 1925, S.B. 84.]

**Art. 5906a. Notice of Fire Damp**

Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [1925 P.C.]

**Art. 5907. Mining Cage**

Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon.

[Acts 1925, S.B. 84.]

**Art. 5907a. Mining Cage**

Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or materials with him on a cage in motion, except for use in making repairs, and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon.

[1925 P.C.]

**Art. 5908. Powder**

No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition.

[Acts 1925, S.B. 84.]

**Art. 5908a. Powder**

No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition.

[1925 P.C.]

**Art. 5909. Safety Lamps**

At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep

for use such number of safety lamps as may be necessary.

[Acts 1925, S.B. 84.]

**Art. 5909a. Safety Lamps**

At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary.

[1925 P.C.]

**Art. 5910. Endangering Life or Health**

It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in the mines, or the security of the mine machinery thereof is endangered.

[Acts 1925, S.B. 84.]

**Art. 5910a. Endangering Life or Health**

No miner, workman or other person shall knowingly or carelessly injure any shaft, safety lamp, instrument, air-course or brattice, or obstruct or throw open an air-way, or carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps or within three feet of any open powder, or handle or disturb any part of the hoisting machinery, or enter any part of the mine against caution, or do any wilful act whereby the lives or health of persons working in mines or the security of the mine machinery thereof is endangered.

[1925 P.C.]

**Art. 5911. Posting Mine Rules**

Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. The posting of such notice shall charge all employees of such mine with legal notice of the contents thereof.

[Acts 1925, S.B. 84.]

**Art. 5911a. Posting Mine Rules**

Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employes of the mine can read them, rules not inconsistent with this chapter,

plainly printed in the English language, which shall govern all persons working in the mine. [1925 P.C.]

#### Art. 5912. Coal Scales

The owner or operator of every coal mine shall provide adequate and accurate scales for weighing coal; the mine inspector shall examine such scales, and if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties.

[Acts 1925, S.B. 84.]

#### Art. 5912a. Coal Scales

The owner or operator of every mine shall provide adequate and accurate scales for weighing coal.

[1925 P.C.]

#### Art. 5913. Check Weighman

The employees in any mine shall have the right to employ a check weighmen<sup>1</sup> at their own option and their own expense.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Probably should read "weighman".

#### Art. 5913a. Check Weighman

The employes in any mine shall have the right to employ a check weighman at their own option and their own expense.

[1925 P.C.]

#### Art. 5914. Oil Used

No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts.

[Acts 1925, S.B. 84.]

#### Art. 5914a. Oil Used

No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts.

[1925 P.C.]

#### Art. 5914b. Penalty

Any person who shall wilfully violate any provision of the twelve preceding articles<sup>1</sup> shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months.

[1925 P.C.]

<sup>1</sup> Articles 5901a, 5904a, 5905a, 5906a, 5907a, 5908a, 5909a, 5910a, 5911a, 5912a, 5913a, 5914a.

#### Art. 5915. Insulating Live Wires

In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated

or protected in a safe manner, so that the person or animal coming in contact therewith shall not be injured thereby. All wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this; but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside the rail, or five feet and six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines.

[Acts 1925, S.B. 84.]

#### Art. 5915a. Insulating Live Wires; Penalty

In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this. But where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed

on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. Any person who shall violate any provision of this article shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months.

[1925 P.C.]

**Art. 5916. Repealed by Acts 1953, 53rd Leg., p. 30, ch. 24, § 2**

**Art. 5917. Map of Mine**

Every operator of a coal mine in this State shall make a map of the underground workings of every mine in his charge. Said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings underground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months. If, for any reason, a mine should be closed, then a final map shall be made and filed; but maps existing may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet.

[Acts 1925, S.B. 84.]

**Art. 5917a. Map of Mine; Penalty**

Any operator of a coal mine in this State who shall fail to make a map of the underground workings of any such mine in his charge in the manner and at the times required by the laws of this State governing such mines, or who shall fail to keep the original of such map on file at his office at or near such mine, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

[1925 P.C.]

**Art. 5918. Animals in Mines**

It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State to permit any work animal under his control to remain in any mine longer than ten

consecutive hours, or to feed or permit to be fed any work animal in said mine, or to store or keep any feed for such animals in said mine. Each person, company, corporation or receiver who shall in any manner violate any provision of this article shall for each offense committed forfeit and pay to the State a penalty of not less than one hundred nor more than five hundred dollars, and the district or county attorney shall institute suit in the name of the State for the recovery of same.

[Acts 1925, S.B. 84.]

**Art. 5918a. Animals in Mines; Penalty**

Any person owning, operating or managing any mine who shall permit any work animal under his control to remain in any mine longer than ten consecutive hours, or who shall feed or permit to be fed any work animal in said mine, or who shall store or keep any feed for such animals in said mine, shall be imprisoned in jail for not less than one month nor more than one year.

[1925 P.C.]

**Art. 5919. Exceptions**

The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with doorframes of concrete, stone or brick, laid in mortar, and which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed, except corn, corn chops, bran and shelled oats, is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine.

[Acts 1925, S.B. 84.]

**Art. 5919a. Exceptions**

The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed except corn, corn chops, bran and shelled oats is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine.

[1925 P.C.]

**Art. 5920. Bath Facilities**

The operator, owner, lessee or superintendent of every coal mine in this State employing ten or more men shall provide a suitable building convenient to the principal entrance of such

mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employees. The employees shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. No operator, owner, lessee or superintendent or company, its officers or agents, maintaining such a bath house at his or its mine as required herein shall be liable for the loss or destruction of any property left at or in said house. The Commissioner of Labor Statistics of the State of Texas shall enforce the provisions of this article.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1184, ch. 380, § 1, eff. Sept. 1, 1969.]

#### Art. 5920a. Bath Facilities; Penalty

The operator, owner, lessee or superintendent of any coal mine employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employes. Any operator, owner, lessee or superintendent of any coal mine violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail for not more than sixty days, or both. Every two weeks of such violation shall be a separate offense.

[1925 P.C.; Acts 1969, 61st Leg., p. 1184, ch. 380, § 2, eff. Sept. 1, 1969.]

## TITLE 96

### MINORS—REMOVAL OF DISABILITIES OF

#### Article

5921 to 5923a. Repealed.

5923b. Rights, Privileges and Obligations of 18-year-olds.

**Art. 5921. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

Prior to repeal, this article was amended by Acts 1965, 59th Leg., p. 964, ch. 464, § 1.

See, now, Family Code, § 31.01.

**Art. 5921a. Repealed by Acts 1965, 59th Leg., p. 964, ch. 464, § 2, eff. Aug. 30, 1965; Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

**Arts. 5921b to 5923a. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

Prior to repeal, articles 5921b and 5922a were amended by Acts 1969, 61st Leg., p. 2522, ch. 844, §§ 1, 2, respectively.

See, now, Family Code, § 31.01 et seq.

**Art. 5923b. Rights, Privileges and Obligations of 18-year-olds**

Sec. 1. The purpose of this Act is to extend all the rights, privileges, and obligations of

majority to all persons who are at least 18 years of age. It shall be construed liberally to accomplish that purpose.

Sec. 2. Notwithstanding any statutory or decisional law, or any rule, regulation, or ordinance of this state or of any political subdivision or incorporated city or town of this state, a person who is at least 18 years of age has all the rights, privileges, and obligations of a person who is 21 years of age. A law, rule, regulation, or ordinance which extends a right, privilege, or obligation to a person on the basis of a minimum age of 21, 20, or 19 years shall be interpreted as prescribing a minimum age of 18 years.

It is specifically provided, however, that with respect to property held by a custodian under the Texas Uniform Gifts to Minors Act, as amended (Article 5923-101, Vernon's Texas Civil Statutes), on effective date hereof and the proceeds and reinvestments thereof, the custodian may elect not to have the provisions of this Act apply by so notifying the minor in writing, but such election may be revoked at the election of the custodian.

[Acts 1973, 63rd Leg., p. 1723, ch. 626, eff. Aug. 27, 1973.]

## TITLE 96A

### MINORS—LIABILITY OF PARENTS FOR ACTS OF MINORS [REPEALED]

**Art. 5923-1. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

Prior to repeal, this article was amended by Acts 1965, 59th Leg., p. 430, ch. 217, § 1.

See, now, Family Code, §§ 33.01 to 33.03.

## TITLE 96B

### GIFTS TO MINORS

#### Art. 5923-101. Texas Uniform Gifts to Minors Act

##### Definitions

Sec. 1. In this Act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of twenty-one (21) years.

(b) A "bank" is a state bank, a national bank, a state building and loan association, or a federal savings and loan association.

(c) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(d) "Court" means the county court, a probate court, or other court exercising original probate jurisdiction.

(e) "The custodial property" includes:

(1) all securities, money, and life or endowment insurance policies and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this Act.

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.

(f) A "custodian" is a person so designated in a manner prescribed in this Act.

(g) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

(h) An "issuer" is a person, firm or corporation who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(i) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(j) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(k) A "minor" is a person under twenty-one years of age who has never been married, except persons under that age whose disabilities of minority have been removed generally in accordance with the laws of this State.

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(m) A "transfer agent" is a person, firm or corporation who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(n) A "trust company" is a bank authorized to exercise trust powers in this State.

(o) "Life or endowment insurance policies and annuity contracts" means only life or endowment insurance policies and annuity contracts on the life of a minor or a member of the minor's family as herein defined.

##### Manner of Making Gift

Sec. 2. (a) An adult person may, during his lifetime, make a gift of a security or money, a life or endowment insurance policy, or an annuity contract to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT**

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

(signature of donor)  
(name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Texas Uniform Gifts to Minors Act.

Dated: \_\_\_\_\_  
(signature of custodian)"

(3) if the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(4) if the subject of the gift is a life or endowment insurance policy or an annuity contract, such policy or contract shall be assigned to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act." Such policy or contract shall be delivered to the person who has been designated as custodian thereof.

(b) Any gift made in a manner prescribed in Subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in Subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this Subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

**Effect of Gift**

Sec. 3. (a) A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money, life or endowment insurance policies or annuity contracts given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act.

(b) By making a gift in a manner prescribed in this Act, the donor incorporates in his gift all the provisions of this Act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this Act.

**Duties and Powers of Custodian**

Sec. 4. (a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor, or of the minor if he has attained the age of fourteen (14) years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one (21) years or ceasing to be a minor by marriage or general removal of disabilities of minority, or, if the minor dies before attaining the age of twenty-one (21) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this Act.

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable, provided that a custodian may not acquire as custodial property any property other than securities or money, life or endowment insurance policies or annuity contracts. He may vote in person or by general or limited proxy a security, policy or contract, which is custodial property. He may consent, directly or through a committee or other agent, to the

reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. On dissolution or liquidation of an issuer of a security which is custodial property, the custodian may receive the minor's share of any property resulting from such dissolution or liquidation and retain and manage it as custodial property except that he cannot sell or exchange it for property not authorized to be acquired as custodial property. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen (14) years.

(i) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this Act, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j) If the subject of the gift is a life or endowment insurance policy or an annuity contract, the custodian shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, except that the designated beneficiary of any such policy or contract held by a custodian shall always be the minor, or in the event of his death, the minor's estate.

**Custodian's Expenses, Compensation,  
Bond and Liabilities**

Sec. 5. (a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(1) A direction by the donor when the gift is made;

(2) The statute of this State applicable to guardians;

(3) An order of the court.

(d) Except as otherwise provided in this Act a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this Act.

**Exemption of Third Persons From Liability**

Sec. 6. No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this Act, or is obliged to inquire into the validity or propriety under this Act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

**Resignation, Death or Removal of Custodian; Bond;  
Appointment of Successor Custodian**

Sec. 7. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this Act.

(b) A custodian, other than the donor, may resign and designate his successor by:

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign

and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one (21) years or otherwise ceases to be a minor, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen (14) years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor, or the minor if he has attained the age of fourteen (14) years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this Section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

#### Accounting by Custodian

Sec. 8. (a) The minor, if he has attained the age of fourteen (14) years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this Act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

#### Construction

Sec. 9. (a) This Act shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

(b) This Act shall not be construed as providing an exclusive method for making gifts to minors.

#### Short Title

Sec. 10. This Act may be cited as the "Texas Uniform Gifts to Minors Act."

[Acts 1957, 55th Leg., p. 1312, ch. 442; Acts 1965, 59th Leg., p. 378, ch. 183, §§ 1 to 6; Acts 1969, 61st Leg., p. 2056, ch. 710, § 1, eff. June 12, 1969.]

# TITLE 97

## NAME

Chapter	Article
1. Assumed Name .....	5924
2. Change of Name [Repealed] .....	5928

### CHAPTER ONE. ASSUMED NAME

Article	
5924.	Business Under Assumed Names.
5924(a).	Duration of Certificate; Renewal; Termination.
5924.1.	Business Under Assumed Name.
5925.	Change of Ownership.
5925a.	Change of Ownership.
5926.	Index of Certificate.
5927.	Exceptions.
5927a.	Corporations Not Included.
5927b.	Punishment.

#### Art. 5924. Business Under Assumed Names

No person shall conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise other than the real name of each individual conducting or transacting such business, unless such person shall file in the office of the county clerk of the counties in which such person conducts, or transacts or intends to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true full name or names of each person conducting or transacting the same, with the post-office address of each. Said certificate shall be executed and duly acknowledged by the persons so conducting or intending to conduct said business in the manner provided for acknowledgment of conveyance of real estate.

[Acts 1925, S.B. 84.]

Repeal of this article to the extent of conflict with art. 5924(a), see art. 5924(a) note.

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5924(a). Duration of Certificate; Renewal; Termination

Sec. 1. The certificate required by the provisions of Article 5924, Revised Civil Statutes of Texas, 1925, to be filed in the office of the county clerk by each and every person conducting business in the State of Texas under an assumed name shall be effective for a period of not to exceed ten years from the date said certificate is filed in the office of a county clerk.

At the end of said ten years said certificate shall become null and void and of no effect, unless prior to said expiration a new certificate shall be filed in the office of the county clerk renewing said certificate for an additional period of not to exceed ten years.

Sec. 2. All of said certificates on file in the offices of county clerks which have heretofore been filed in accordance with Article 5924, shall terminate and become null and void and of no effect on and after December 31, 1962, provided, however, that said certificates now on file in the records in the county clerk's office may be extended for an additional period of not to exceed ten years by the filing of a new certificate on or before December 31, 1962; and provided further, that each of the businesses now being conducted under an assumed name in any county in which said business has had a certificate filed and recorded in the office of the county clerk in accordance with said Article 5924, shall be notified in writing by the county clerk of each county of the provisions of this law, terminating their present certificate as of December 31, 1962, unless a new certificate is filed; and such written notice shall be effective by being deposited in a United States Post Office addressed to the name of the business at the address given in the certificate.

[Acts 1961, 57th Leg., p. 984, ch. 428, § 1.]

Section 2 of the 1961 Act provided: "All laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to the provisions of Article 5924, Revised Civil Statutes of Texas, 1925."

#### Art. 5924.1 Business Under Assumed Name

No person or persons shall carry on or conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business unless such person or persons shall file in the office of the county clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is or is to be conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or the addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct said business in the manner now provided for acknowledgment of conveyance of real estate.

[1925 P.C.]

**Art. 5925. Change of Ownership**

Whenever there is a change in ownership of any business operated under any such assumed name each person disposing of his interest therein or withdrawing therefrom shall file with the county clerk of each county in which such business is being conducted and has a place of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged as directed in the preceding article.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 5925a. Change of Ownership**

Whenever there is a change in ownership of any business operated under any such assumed name as set out in the preceding article, the person or persons withdrawing from said business or disposing of their interest therein, shall file in the office of the county clerk of the county or counties in which such business is being conducted and has a place or places of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged by the person or persons so withdrawing from or selling their interest in said business in the manner now provided for acknowledgment of conveyance of real estate.

[1925 P.C.]

**Art. 5926. Index of Certificate**

Each county clerk shall keep an alphabetical index of all persons filing certificates provided

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for herein, and for indexing and filing each certificate shall receive a fee of one dollar. A copy of such certificate duly certified to by the county clerk in whose office the same was filed shall be presumptive evidence in all courts in this State of the facts therein contained.

[Acts 1925, S.B. 84.]

*Repeal of fees provided for county clerks in laws or parts of laws conflicting with the provisions of article 3930, see note under article 3930.*

**Art. 5927. Exceptions**

The three preceding articles shall not apply to any domestic or foreign corporation lawfully doing business in this State.

[Acts 1925, S.B. 84.]

**Art. 5927a. Corporations Not Included**

The preceding articles<sup>1</sup> shall in no way apply to any corporation duly organized under the law of this State or to any corporation organized under the laws of any other State and lawfully doing business in this State.

[1925 P.C.]

<sup>1</sup> Articles 5924.1, 5925a.

**Art. 5927b. Punishment**

Any person owning, carrying on, or transacting business as described in the preceding articles of this chapter<sup>1</sup> who shall fail to comply with any provision of this Chapter shall be fined not less than twenty-five nor more than one hundred dollars. Each day of such violation shall be a separate offense.

[1925 P.C.]

<sup>1</sup> Articles 5924.1, 5925a, 5927a.

**CHAPTER TWO. CHANGE OF NAME  
[REPEALED]**

**Arts. 5928 to 5931. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing these articles, enacts Title 2 of the Texas Family Code. See, now, Family Code, § 32.01 et seq.

## TITLE 97A

### NATIONAL GUARD ARMORY BOARD

Article	
5931-1.	Composition.
5931-2.	Headquarters.
5931-3.	Meetings.
5931-4.	General Powers.
5931-5.	Specific Powers.
5931-6.	Transfer.
5931-7.	Tax Exemption.
5931-8.	Records.
5931-9.	Transfers and Sales.
5931-10.	Conditions Requiring Reservation of Mineral Interests.
5931-11.	Bonds, etc., to be Authorized Investments.
5931-12.	Refunding Bonds.
5931-13.	Relationship to Previous Boards.

*Title 97A, National Guard Armory Board, consisting of articles 5931-1 to 5931-13, was adopted and enacted by Acts 1967, 60th Leg., p. 415, ch. 186.*

#### Art. 5931-1. Composition

There is hereby created the Texas National Guard Armory Board to be composed of the two senior officers of the Texas Army National Guard, and the senior officer of the Texas Air National Guard. The Board shall be composed of three members actively serving in the Texas Army National Guard and the Texas Air National Guard and the term of office for members of the Texas National Guard Armory Board shall be of six years' duration without regard to organizational structure of the National Guard. Any member's retirement being of any nature from active service with the Texas Army National Guard or Texas Air National Guard shall constitute a vacancy to be filled in accordance with this Act. In the event of a vacancy, the person qualifying for the position shall complete the unexpired term of his predecessor. Each officer of the Texas Army National Guard or the Texas Air National Guard who may thereafter fill the position qualifying him for membership on the Texas National Guard Armory Board, as provided in this Act, shall be certified by the Governor of Texas to the Secretary of State, who shall notify the officer concerned within 10 days after the occurrence of the vacancy. Each member of the Texas National Guard Armory Board shall, within 15 days from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the constitutional oath of office.

The senior and junior, in length of service, of the members on said Board shall be, respectively, chairman and treasurer thereof, and the persons holding such office shall change as length of service may determine when changes in the membership of said Board occur.

In the event any member of the Board is unable to serve because of his induction into fed-

eral service or the induction of his military unit into federal service, the Governor of Texas shall designate the next senior officer of the Texas National Guard as successor in function, who shall thereupon be and become a member of the Board only for the duration of such term of induction into federal service; thereafter the military successor in function of the Texas National Guard shall qualify as a member of the Board.

It is further provided that none of the members of this Board shall at the time hold any other office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard.

Should any officer fail to qualify as a member of the Board under the provisions of the State Constitution or the provisions of this Act, the next senior officer in military rank to qualify shall be certified by the Governor of Texas to the Secretary of State as provided in this Act.

[Acts 1967, 60th Leg., p. 415, ch. 186, § 1, eff. May 12, 1967; Acts 1971, 62nd Leg., p. 1661, ch. 470, § 1, eff. May 27, 1971.]

Acts 1967, 60th Leg., p. 415, ch. 186, § 2 provided: "That Article 5767, Revised Civil Statutes of the State of Texas, 1925, and all other laws and parts of laws in conflict herewith be and the same are hereby repealed."

Section 4 of the 1971 amendatory act was a severability provision, and section 5 thereof repealed all conflicting laws to the extent of conflict.

#### Art. 5931-2. Headquarters

The board must maintain a headquarters, and the headquarters must be located in Travis County, but the board may, within the county, change the location of its headquarters from time to time.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-3. Meetings

The board shall act by resolution adopted at a meeting held in accordance with its bylaws. A simple majority of the members of the board constitutes a quorum for the transaction of business.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-4. General Powers

The board shall constitute a public authority and a body politic and corporate and shall possess all powers necessary for the acquisition, construction, rental, control, maintenance, and operation of all Texas National or Texas State Guard Armories, including all property and equipment necessary or useful in connection with the armories.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967.]

**Art. 5931-5. Specific Powers**

The Board shall possess but is not limited to the following powers:

- (1) to sue and be sued;
- (2) to enter into contracts in connection with any matter within the objects, purposes or duties of the Board;
- (3) to have and use a corporate seal;
- (4) to appoint, employ and pay, and dismiss an executive secretary, and also such other officials, counsel, lawyers, agents, and employees as may be necessary to carry out the objects, purposes and duties of the Board, and to prescribe their duties and fix their compensation;
- (5) to adopt, and from time to time to change or amend, all necessary bylaws for the conduct of the business and affairs of the Board;
- (6) to acquire, by gift or purchase, for use as building sites or for any other purposes deemed by said Board to be necessary in connection with or for the use of units of the Texas National Guard, property of any and every description, whether real, personal or mixed, including, but without limitation on the foregoing, leasehold estates in real property, and hold, maintain, sublease, convey, and exchange or sell as hereinafter provided, such property, in whole or in part, and/or pledge the rents, issues and profits thereof in whole or in part; also, to acquire, by gift or purchase, or by construction of the same, furniture and equipment suitable for Armory purposes and to hold, maintain, sublease, convey and exchange or sell as hereinafter provided, such furniture and equipment, in whole or in part;
- (7) to construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct, and to lease and sublease, convey and exchange, or sell as hereinafter provided, in whole or in part, all of its property and/or pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising any state camps, the site therefor, in maximum area 200,000 square feet, shall, promptly on said Board's request therefor to the Adjutant General of Texas, be selected and described by a board of officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of

said Adjutant General; and provided further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all purposes contemplated by the Act of which this section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board;

(8) from time to time, to borrow money, and to issue and sell bonds, debentures, and other evidences of indebtedness for the purpose of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing, and equipping one or more buildings, such bonds, debentures, or other evidences of indebtedness to be fully negotiable and to be secured as follows: by a pledge of, and payable solely from, the rents, issues, and profits of all of the property of the Board; of the property acquired or constructed by the Board, in whole or in part, with the proceeds of the borrowing transactions. Provided, however, that interest falling due within 24 months after the issuance and sale of any particular bonds, debentures, or other evidences of indebtedness, or any series thereof, may be paid out of the proceeds of the sale thereof. Any such bonds, debentures, or other evidences of indebtedness may be issued in series, and if so issued, all series thereof issued under or secured by the same trust indenture or trust agreement, shall rank equally, without preference or priority of one series over another, whether by reason of the date of issue or negotiation thereof or date of maturity thereof or for any other reason. All such bonds, debentures, or other evidences of indebtedness and interest thereon, shall be exempt from taxation (except inheritance taxes) by the State of Texas or by any municipal corporation, county or political subdivision, or taxing district of the State. All bonds, debentures, or other evidences of indebtedness authorized and issued under authority of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures, or other evidences of indebted-

ness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto. Said bonds, debentures, or other evidences of indebtedness may be sold by the Board in any manner it may determine; provided, that no bonds, debentures, or other evidences of indebtedness shall be issued and sold at a price which will be such that the interest costs of the money received by the Board from the sale thereof will exceed six percent per annum, computed to maturity according to standard tables of bond values, and provided further, that no bonds, debentures, or other evidences of indebtedness shall be sold unless and until same shall have been approved by the Attorney General of the State of Texas and registered with the Comptroller of Public Accounts. The Board shall have power from time to time to execute and deliver trust deeds and trust agreements whereunder any bank or trust company authorized by the laws of the State or of the United States of America to accept and execute trusts in the State, or any individual selected by the Board, may be named and act as trustee. Any such trust deed or trust agreement shall be signed in the name and on behalf of the Board by the chairman of the Board and countersigned by the treasurer thereof and the corporate seal of the Board shall be affixed thereto and such seal attested by the executive secretary of the Board; and any such trust deed or trust agreement may, if it name such bank or trust company to act as trustee, contain provisions for the deposit with the trustee thereunder and the disbursement by such trustee of the proceeds of the bonds, debentures, or other evidences of indebtedness issued thereunder or secured thereby, and/or the rents, issues, and profits of all property acquired or constructed out of such proceeds, and, whether or not such bank or trust company be named as trustee, may also contain such provisions for the protection and enforcement of the rights and remedies of the trustee and the holders of such bonds, debentures, or other evidences of indebtedness as the Board may approve, including provisions for the acceleration of the maturity of any such bonds, debentures, or other evidences of indebtedness upon default by the Board in the performance or observance of any of the covenants or provisions of such bonds, debentures, or other evidences of indebtedness or of the trust deed or trust agreement whereunder the same are issued or secured. Any such trust deed or trust agreement shall provide that all bonds, debentures, or other evidences of indebtedness issued at any time thereunder shall be equally secured thereby but any such trust deed or trust agreement may contain and impose upon the Board limitations and

conditions governing the right of the Board to issue additional bonds, debentures, or other evidences of indebtedness. All such bonds, debentures, or other evidences of indebtedness shall be signed by the chairman of the Board, countersigned by the treasurer thereof, and the corporate seal of the Board shall be thereto affixed, and such seal attested by the executive secretary of the Board, and in case any officer of the Board who shall have signed or attested any such bond, debenture, or other evidence of indebtedness shall cease to be such officer before such bond, debenture, or other evidence of indebtedness shall have been actually issued by the Board, such bond, debenture, or other evidence of indebtedness may nevertheless be validly issued by the Board. Such bonds, debentures, or other evidences of indebtedness may be issued in fully registered form without interest coupons, or in coupon form registerable as to principal only, or in bearer form with coupons attached. All of the coupons shall be authenticated by the facsimile signature of the treasurer of the Board; and

(9) to execute and deliver leases, or subleases in the case of buildings located upon leasehold estates acquired by the Board, demising and leasing to the State of Texas through the Adjutant General, who shall execute the same for said State, for such lawful term as may be determined by the Board, any building or buildings, and the equipment therein and the site or sites therefor, to be used for Armory and other purposes and to renew such leases or subleases from time to time; provided, however, that if at any time the State of Texas shall fail or refuse to pay the rental reserved in any such lease or sublease, or shall fail or refuse to lease or sublease any such building and site, or to renew any existing lease or sublease thereon at the rental provided to be paid, then the Board shall have the power to lease or sublease such building or equipment and the site therefor to any person or entity and upon such terms as the Board may determine. The law requiring notice and competitive bids shall not apply to leasing or subleasing of such property. The annual rental (which may be made payable in such installments as the Board shall determine) to be charged the State of Texas for the use of such property leased or subleased to it by the Board shall be sufficient to provide for the operation and maintenance of the property so leased or subleased, to pay the interest on the bonds, debentures, or other evidences of indebtedness, if any, issued for the purpose of acquiring, constructing, or equipping any such property, to provide for the retirement of such bonds, debentures, or other evidences of indebtedness, if any, and the payment of the expenses incident to the is-

suance thereof, as well as the necessary and proper expenses of the Board not otherwise provided for.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967; Acts 1971, 62nd Leg., p. 1662, ch. 470, § 2, eff. May 27, 1971.]

#### Art. 5931-6. Transfer

As and when any of the property owned by the board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the board may donate, transfer, and convey such property by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-7. Tax Exemption

All property held by the board, together with the rents, issues, and profits thereof shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision, or taxing district of this state.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-8. Records

The board shall cause to be kept accurate minutes of its meetings, and accurate records and books of account in conformity with approved methods of accounting, clearly reflecting the income and expenses of the board and all transactions in relation to its property. In the execution and administration of objects and purposes herein set forth, the board shall have power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this Act shall be construed liberally in order to effectuate such objects and purposes.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-9. Transfers and Sales

The Board may receive from the Adjutant General state-owned National Guard Camps and all land, improvements, buildings, facilities, installations, and personal property in connection therewith, and administer the same along with any of the Board's other property, or make proper disposal of such property otherwise when designated by the Board and the Adjutant General as "Surplus" when in the best interest of the Texas National Guard, its successors or components. The Armory Board is further authorized to remove, dismantle, and sever, or to authorize the removal, dismantling, and severance of any of said property to accomplish the above purposes. All such property when designated for sale, shall be sold by the Armory Board to the highest bidder for cash, and all funds received from such sale shall be

deposited in the State Treasury to the credit of the Texas National Guard Armory Board for the use and benefit of the Texas National Guard or their successors or components; provided, however, that the Board may reject any or all bids received and further provided, that none of the funds received from sales may be expended except by legislative appropriation.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967; Acts 1971, 62nd Leg., p. 1665, ch. 470, § 3, eff. May 27, 1971.]

#### Art. 5931-10. Conditions Requiring Reservation of Mineral Interests

Any sale or deed made pursuant to the terms of this Act shall reserve unto the State of Texas, a one-sixteenth mineral interest free of cost of production; provided, however, that the board shall be authorized to reconvey to the original grantor or donor all rights, title, and interests, including mineral interests, to all or any part of the lands conveyed by such grantor or donor, and the board shall further be authorized, upon a negotiated basis at fair market value, to convey to such original grantor or donor improvements constructed on the land to be reconveyed. All funds derived from any such sales shall be deposited by the board in the State Treasury, as hereinbefore provided with regard to other funds derived from other authorized sales.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-11. Bonds, etc., to be Authorized Investments

All bonds, debentures, or other evidences of indebtedness authorized and issued by the Texas National Guard Armory Board, under authority of Senate Bill No. 326, passed at the Regular Session of the 46th Legislature of Texas and approved May 1, 1939, and laws amendatory thereof, shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations, or subdivisions of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures, or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

**Art. 5931-12. Refunding Bonds**

The Texas National Guard Armory Board is hereby authorized to provide by resolution for the issue of refunding bonds for the purpose of refunding any bonds issued under the provisions of Chapter 366, Acts of the 45th Legislature, Regular Session, 1937, page 740, and/or Chapter 2, Senate Bill No. 326, Acts of the 46th Legislature, 1939, page 487; provided, however, that this authority to issue refunding bonds is limited to those situations where a savings in interest can be effected thereby.

The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the board in respect to the same shall be governed by the provisions of this Article, insofar as the same may be applicable.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

**Art. 5931-13. Relationship to Previous Boards**

The board shall succeed to the ownership of all property of, and all lease and rental contracts entered into by, the Texas National Guard Armory Board that was created by prior statutes and all of the obligations contracted or assumed by the last-mentioned board with respect to any such property and contracts shall be the obligations of the board created by this Act. With this exception, no obligation of said former board shall be binding upon the board hereby created.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

## TITLE 98

## NEGOTIABLE INSTRUMENTS ACT [REPEALED]

Arts. 5932 to 5948. Repealed by Acts 1965, vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5932-5948 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th*

*Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 3.101 et seq.

# TITLE 99

## NOTARIES PUBLIC

### Article

- 5949. Notary Public.
- 5950 to 5953. Repealed.
- 5954. Authority of Notary; Printing or Stamping of Name Under Signature.
- 5955. Notaries' Records.
- 5956. Copies of Records.
- 5957. Removal.
- 5958. Office to Become Vacant.
- 5959. Effect of Vacancy.
- 5960. Seal.

### Art. 5949. Notary Public

#### Appointment; Number and Terms

1. The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public to serve each county of the state. Such appointments may be made at any time, and the terms of all appointments shall end on the first day of June of each odd-numbered year, unless sooner revoked by the Secretary of State.

#### Eligibility

2. To be eligible for appointment as Notary Public for any county, a person shall be a resident citizen of this state and at least twenty-one (21) years of age, and either a resident of the county for which he is appointed, or shall maintain his principal place of business or of employment in such county; provided that any person may be appointed, as hereinabove set out, in only one county in this state at the same time; provided further that where such person resides within the limits of a county with a population of more than fifty thousand (50,000), according to the last preceding federal census, containing an incorporated city, town or village partially located in another county, said person may be appointed a Notary Public for either of such counties; provided further that nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.

#### Procedure for Appointment; Application; Contents; Duties of County Clerks

3. Appointments to the office of Notary Public shall be made as follows:

Any person desiring appointment as a Notary Public shall make application in duplicate to the county clerk of his county of residence, or the county in which the applicant seeks to act as Notary Public, on forms prescribed by the Secretary of State, which includes his name as it will be used in acting as such Notary Public, his post-office address, his social security number, if any, a statement that he has never been convicted of a crime involving moral turpitude, and shall satisfy the clerk

that he is at least twenty-one (21) years of age and otherwise qualified by law for the appointment which is sought. One copy of each application, along with the names of all persons making such application shall be sent in duplicate by the county clerk to the Secretary of State with the certificate of the county clerk that according to the information furnished him, such person is eligible for appointment as Notary Public for such county. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify the county clerk whether such appointment or appointments have been made. Upon receiving notice from the Secretary of State of such appointments, the county clerk shall forthwith notify all persons so appointed to appear before him within fifteen (15) days from the date of such appointment and qualify as hereinafter provided. The appointment of any person failing to qualify within the time allowed shall be void, and if any such person desires thereafter to qualify, his name shall be resubmitted in the same manner as hereinabove provided.

#### Fees

4. At the time of such qualification the county clerk shall collect the fees allowed him by law for administering the oath and approving and filing the bond of such Notary Public, together with the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public.

#### Notice to Secretary of State; Issuance of Commission; Rejection of Application; Appeal

5. Immediately after the qualification of any Notary Public, the county clerk shall forthwith notify the Secretary of State that such person has qualified and the date of such qualification, and shall remit with such notice the fee due the Secretary of State, whereupon, the Secretary of State shall cause a commission to be issued for the county in which such Notary Public has qualified, which commission shall be effective as of the date of qualification in that county. All such commissions shall be forwarded to the proper county clerk for delivery to such persons entitled to receive them. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

The Secretary of State may, for good cause, reject any application, or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to

the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo.

"Good cause" shall include final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, and final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state.

**Expiration of Term; Reappointment; Changes of Address; Dates of Reappointment**

6. Any qualified Notary Public whose term is expiring may be reappointed by the Secretary of State without the necessity of the county clerk resubmitting his name to the Secretary of State, provided such appointment is made in sufficient time for such Notary Public to be qualified on the expiration date of the term for which he is then serving; and provided that if any such Notary Public has removed his residence, or his principal place of business or employment, to a county or counties other than the one for which he has been appointed, his office in such county or counties shall be automatically vacated and if he desires to act as a Notary Public in such other county or counties, his commission in such county or counties shall be surrendered to the Secretary of State and his name shall be submitted by the clerk of such county or counties as hereinabove provided.

The Secretary of State shall reappoint Notaries Public on May 1 of each odd-numbered year, which reappointment shall be effective June 1 of said year for the next term of office. The County Clerk of each county shall notify such persons, who are reappointed from his or her county, to qualify within the first fifteen (15) days of May of each odd-numbered year which qualifying shall become effective as of June 1 and shall not be effective prior thereto.

**Bond**

7. Any person appointed a Notary Public, before entering upon his official duties, shall execute a bond in the sum of One Thousand (\$1,000.00) Dollars with two or more solvent individuals, or one solvent surety company authorized to do business in this State, as surety, such bond to be approved by the county clerk of his county, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe his name and social security number to the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. Said bond shall be deposited in the office of the county clerk and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the time allowed therefor.

**Failure or Refusal of County Clerk to Perform Duties**

8. If any county clerk fails or refuses to forward the names of persons requesting appointments, notices of qualification, or to remit any fees due to the Secretary of State, or to notify any applicant of his appointment within sixty (60) days after receipt of same by the county clerk, the Secretary of State shall certify such failure or refusal to the State Comptroller, the County Auditor and Commissioners Court of such county, after which no claim or account in favor of such clerk shall be approved or paid until the Secretary of State shall certify to such officials that all requirements hereunder have been complied with.

**Public Records; Inspection**

9. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the offices of the county clerks and in the office of the Secretary of State after any such Notary Public has qualified, and shall be open to inspection of any interested person at such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records; but neither a county clerk nor the Secretary of State shall be required to furnish lists of the names of persons appointed before their qualification nor lists of unreasonable numbers of qualified Notaries Public.

**Administration and Enforcement of Act; Regulations**

10. The Secretary of State may make regulations necessary for the administration and enforcement of this Act consistent with all of its provisions.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 14, ch. 9, § 1; Acts 1939, 46th Leg., p. 493, § 1; Acts 1941, 47th Leg., p. 853, ch. 528, § 1; Acts 1943, 48th Leg., p. 459, ch. 309, § 1; Acts 1945, 49th Leg., p. 393, ch. 254, § 1; Acts 1945, 49th Leg., p. 674, ch. 373, § 1; Acts 1947, 50th Leg., p. 548, ch. 323, § 1; Acts 1965, 59th Leg., p. 182, ch. 74, §§ 1, 2, eff. April 8, 1965; Acts 1965, 59th Leg., p. 1517, ch. 660, § 1; Acts 1969, 61st Leg., p. 816, ch. 272, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2352, ch. 716, §§ 1, 2, eff. June 8, 1971.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Arts. 5950 to 5953. Repealed by Acts 1943, 48th Leg., p. 459, ch. 309, § 2**

**Art. 5954. Authority of Notary; Printing or Stamping of Name Under Signature**

Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protests<sup>1</sup> instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided further that all Notaries Public

shall print or stamp their names under their signatures on all such written instruments, protests<sup>1</sup> instruments, oaths, or depositions; provided that failure to so print or stamp their names under their signatures shall not invalidate such acknowledgment.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 120, ch. 94, § 1.]

<sup>1</sup> Probably should read "protest."

#### Art. 5955. Notaries' Records

Each notary public shall keep a well bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon.

[Acts 1925, S.B. 84.]

#### Art. 5956. Copies of Records

Copies of all records, declarations, protests, and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same au-

thority as if certified by the notary by whom they were originally made.

[Acts 1925, S.B. 84.]

#### Art. 5957. Removal

Any notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

[Acts 1925, S.B. 84.]

#### Art. 5958. Office to Become Vacant

Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant.

[Acts 1925, S.B. 84.]

#### Art. 5959. Effect of Vacancy

Whenever the office of notary public shall be vacated by resignation, removal or death, the county clerk of the county where said notary resides shall obtain and deposit in his office the record books and all public papers belonging in the office of said notary. The seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county.

[Acts 1925, S.B. 84.]

#### Art. 5960. Seal

Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of \_\_\_\_\_, Texas," around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith.

[Acts 1925, S.B. 84.]

# TITLE 100

## OFFICERS—REMOVAL OF

**Article**

- 5961. By Impeachment.
- 5962. Impeachment.
- 5963. Trial by Senate.
- 5963a to 5963c. Repealed.
- 5964. Removed by Address.
- 5965. Judges Removed by Supreme Court.
- 5966. Jurisdiction of Supreme Court.
- 5966a. State Judicial Qualifications Commission.
- 5967. State Officers Appointed by Governor.
- 5968. Convictions Work Removal.
- 5969. Appeal Supersedes Order of Removal.
- 5970. By District Judge.
- 5971. Cause to be in Writing.
- 5972. "Incompetency."
- 5973. "Official Misconduct."
- 5974. Articles Apply to Cities.
- 5975. Failure to Give Bond.
- 5976. Proceedings.
- 5977. Requisites of Petition.
- 5978. General Issue Submitted.
- 5979. Citation.
- 5980. Time to Answer.
- 5981. How Trial Conducted.
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- 5982-a. Compensation of Temporary Officer; Retention of Fees Earned and Collected.
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- 5983. Appeal or Writ of Error.
- 5984. Against District Attorneys.
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- 5987. Precedence on Appeal.
- 5988. Notary Public.
- 5989. Public Weigher.
- 5990. District Clerk Removed.
- 5991. Mayor and Aldermen.
- 5992. Alderman.
- 5993. Against Mayor.
- 5994. Procedure.
- 5995. Not to Apply to all Cities.
- 5996. Nepotism.
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- 5996d. Shall Not Approve Account.
- 5996e. Official Stenographer.
- 5996f. Punishment.
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- 5997. Suits by Attorney General.

**Art. 5961. By Impeachment**

The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner, Judges of the Supreme Court, of the Court of Criminal Appeals, of the Courts of Civil Appeals, of the districts courts, of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or en-

terprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers.

[Acts 1925, S.B. 84.]

**Art. 5962. Impeachment**

The power of impeachment shall be vested in the House of Representatives. If the House shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of. If the House shall be in session at a regular or called session of the Legislature, at the time it undertakes any investigation pertaining to impeachments, and the legislative session shall expire by limitation, or it shall in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House be not in session when the cause for impeachment may arise or be discovered, or when it is desired to institute any investigation pertaining to a contemplated impeachment, the House may be convened for the purpose of impeachment in the following manner:

1. By proclamation of the Governor; or
2. By proclamation of the Speaker of the House, which proclamation shall be

made only when petitioned in writing by not less than fifty members of the House; or

3. By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph 3, as above, by the members signing the same or some one or more of them designated by such signers for such purpose. Such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this law. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State.

Any committee of the House, acting under the terms of this law, shall have and exercise all the powers which may be conferred upon it by the House.

[Acts 1925, S.B. 84.]

#### Art. 5963. Trial by Senate

All officers, agents or employes against whom articles of impeachment may be preferred by said House shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

If the Senate be in session, at a regular or called session of the Legislature when articles of impeachment are preferred against any officer, agent or employee by the House, it shall receive such articles from the House and as soon as practicable, organize a court of impeachment and dispose of such matters. If the session in which such articles are preferred and presented shall, for legislative purposes expire by limitation, or by adjournment in so far as legislative purposes are concerned, before the matters presented by such articles shall have finally been disposed of by the Senate, the Senate shall continue in session, for such purpose, so long as may be necessary to dispose of such matters, or may adjourn to some day certain, when it shall reconvene for the purpose of disposing of such matters and thereupon such matters shall be considered and disposed of as expeditiously as possible.

If the Senate be not in session at a regular or called session of the Legislature when articles of impeachment may be preferred by the House, the House shall cause a certified copy of such articles of impeachment to be delivered, by personal agent or registered mail, to the Governor and each member of the Senate who may be within the State and accessible, and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering and disposing of such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor shall fail to issue such proclamation within ten days after such articles of impeachment are preferred by the House then,

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor shall fail to issue such proclamation within fifteen days from the date upon which articles of impeachment were preferred by the House then,

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate shall fail to issue such proclamation within twenty days from the date upon which such articles of impeachment were preferred by the house then,

4. By proclamation in writing signed by a majority of the members of the Senate.

Such proclamation, in either case, shall be in writing, shall state in general terms the purpose for which the Senate is to be convened, shall fix the date for the convening thereof for such purposes, which shall not be later than twenty days from the issuance of the proclamation, and shall be filed in the office of the Secretary of State as a public record. Such proclamation, in either case, shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be sent by registered mail to each member of the Senate

by, or under the direction of the author or authors thereof. Upon the day fixed for the convening of the Senate for such purposes it shall be the duty of each member of the Senate to be in attendance thereupon, and upon such date the Senate shall convene. Two-thirds of the members of the Senate, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, and the Senate at such a session may compel the attendance of any absent member whether a quorum is present or not.

The Senate so convened shall continue in session until such matters are finally disposed of, or it may from time to time, adjourn to a day certain when the consideration of such matters shall be resumed and disposed of.

The Senate, at any time, shall have and exercise all the powers itself, or through committees or agents, which is or may be conferred upon it by law as in other cases when it is in session. It may send for persons, papers, records, books, etc., and compel the giving of testimony, and punish for contempt to the same extent as the district courts.

Members of the Senate when so convened, and the Lieutenant Governor when acting, shall receive the same mileage and per diem as is provided for members of the Legislature; the same, together with the pay of all agents, appointees, employees and other expenses incident to such impeachment trial, shall be paid from such appropriations as have been or shall be made for the contingent expenses of the Legislature or for the mileage and per diem of members.

[Acts 1925, S.B. 84.]

**Arts 5963a to 5963c. Repealed by Acts 1927, 40th Leg., p. 360, ch. 242, § 1**

**Art. 5964. Removed by Address**

The judges of the Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, district courts and criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by the Governor on the address of two-thirds of each house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively.

[Acts 1925, S.B. 84.]

**Art. 5965. Judges Removed by Supreme Court**

The Supreme Court may remove any judge of the district court or of any criminal district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court.

[Acts 1925, S.B. 84.]

**Art. 5966. Jurisdiction of Supreme Court**

The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the Courts of Civil Appeals. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

[Acts 1925, S.B. 84.]

**Art. 5966a. State Judicial Qualifications Commission**

“Commission”, “Master”, and “Judge”

Sec. 1. As used in this chapter, “commission” means the State Judicial Qualifications Commission provided for in Section 1-a of Article V of the Constitution, “master” means a special master appointed by the Supreme Court pursuant to said Section 1-a, and, unless the context otherwise requires, “judge” means a justice or judge who is the subject of an investigation or proceeding under said Section 1-a.

Employment of Employees: Compensation and Expenses of Experts, Reporters and Witnesses: Attorney General to Act as Counsel: Employment of Special Counsel: Seal

Sec. 2. The commission may employ such employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission and upon the master, may arrange for and compensate medical and other experts and reporters, may arrange for attendance of witnesses, including witnesses not subject to subpoena, and may pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Section 1-a of Article V of the Constitution, whether or not specifically enumerated herein. The Attorney General shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ special counsel from time to time when it deems such employment necessary. The commission may also employ a seal of such form as it shall determine.

**Expense Allowances of Members and Master**

Sec. 3. Each member and employee of the commission and each master shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties, but the members of the commission shall not receive any compensation for their services.

**Cooperation With and Assistance and Information to Commission**

Sec. 4. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the commission.

**Duty of Sheriffs and Constables to Serve Process and Execute Orders of Commission**

Sec. 5. It shall be the duty of the sheriffs and constables in the several counties, upon request of the commission, any member thereof, any master or any authorized representative of the commission, to serve process and execute all lawful orders of the commission. Such process and orders may also be served by any other person designated by the commission, any member thereof, any master or any authorized representative of the commission.

**General Powers of Commission or Master**

Sec. 6. In the conduct of investigations and formal proceedings any member of the commission or the master may (a) administer oaths; (b) order and otherwise provide for the inspection of books and records; and (c) issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony relevant to any such investigation or formal proceeding.

**Censure Procedures**

Sec. 6A. Procedures to be employed by the commission in the exercise of its power of censure, as provided in Article V, Section 1-a, Subsection (6), of the Texas Constitution, will be determined by the commission following a hearing held before it as provided in Article V, Section 1-a, Subsection (8), of the Texas Constitution.

**Extent of Process**

Sec. 7. In any investigation or formal proceeding in any part of the state the process extends to all parts of the state.

**Petition for Order Compelling Person to Attend or Testify or Produce Writings or Things: Service of Order to Appear Before Court: Order to Appear Before Commission or Master: Contempt**

Sec. 8. If any person other than the judge refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the master may petition any district court for an order compelling such person to attend and testify or produce the writings or things required by the subpoena

na before the commission or the master. The court shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court that the subpoena was regularly issued, the court shall order such person to appear before the commission or the master at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

**Depositions: Petition for Order Requiring Person to Appear and Testify Before Designated Officer: Subpoena**

Sec. 9. In any pending investigation or formal proceeding, the commission or the master may order the deposition of a person residing within or without the State to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in any district court a petition entitled "In the Matter of Proceeding of State Judicial Qualifications Commission No. \_\_\_\_\_ (state number)," and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or master, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this state, the petition shall be filed in the district court of the county in which such person resides or is present, otherwise in the district court of any county in which the commission maintains an office. Upon the failure to obey such subpoena or any order issued in connection therewith, such a person shall be dealt with as for contempt of court.

**Fees and Mileage of Witnesses**

Sec. 10. Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in civil cases. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

**Costs**

Sec. 11. No award of costs shall be made in any proceeding before the commission, master, or district court.

Compensation of Active or Retired Judge or  
Justice as Master

Sec. 12. Any active district judge or justice of the court of civil appeals appointed to act as master under said Section 1-a shall, in addition to and cumulative of all other compensation and expenses authorized by law, receive, while in the performance of their duties as master, a per diem of \$25 for each day, or fraction thereof, spent in the performance of their duties as such master. Any retired judge or justice of the court of civil appeals appointed to act as such master shall receive while in the performance of their duties as such master a per diem of \$25 for each day or fraction thereof spent in the performance of their duties as master and in addition an amount representing the difference between all of the retirement benefits of such judge as a retired judge and the salary and compensation received from the state by active district judges or justices of the court of civil appeals as the case might be. Such retirement allowances shall continue to be paid by and from the same source as in the instance of a retired judge who had not been assigned duties. Payments of the additional amounts provided for by this section shall be upon certificates of approval by the State Judicial Qualifications Commission.

Commencement of Initial Term

Sec. 13. The initial term of the members of said commission shall commence as of the 22nd day of May, 1967.

Immunity

Sec. 14. Any person other than the judge who refuses to testify, give testimony or produce documents or things in any proceeding or deposition in connection with any proceeding before the commission upon the ground that his testifying, his testimony or the production of such document or thing may tend to incriminate him, may nevertheless be required to testify and to produce such document or thing, but when so required under the provisions of Section 8 hereof over his proper claim of privilege against self-incrimination or his right not to testify, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produced evidence, documentary or otherwise.

Physical and Mental Examinations

Sec. 15. The commission shall have authority to require a judge to submit to a physical and mental examination, at the expense of the commission, by physicians selected by the commission, where the proceeding before the commission involves the question of the involuntary retirement of such judge because of physical or mental incapacity to discharge his duties.

Such examination or examinations may be had upon 10 days' written notice to the judge specifying the name of the examining physician, the date, time and place it is to be made. The examination may be made at a place in the

city, town, or village where the judge either permanently or temporarily resides, provided he may, with his consent, be examined elsewhere within this state.

The examining physician shall make his written report to the commission and a copy of said report shall be furnished the judge by the commission upon his written request or that of his attorney.

Any such report shall be received as evidence without further formality, but subject to the right of the commission to require the oral or deposition testimony of any reporting physician whether for purposes of cross-examination or otherwise, in respect of the content of the report, and subject to the same right on the part of the judge, if duly demanded by or for him in writing.

Repealer

Sec. 16. If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, the Legislature hereby declares that this Act shall have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision.

[Acts 1967, 60th Leg., p. 1159, ch. 516, eff. June 14, 1967; Acts 1971, 62nd Leg., p. 2407, ch. 757, § 1, eff. June 8, 1971.]

**Art. 5967. State Officers Appointed by Governor**

All State officers appointed by the Governor, or elected by the Legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter.

[Acts 1925, S.B. 84.]

**Art. 5968. Convictions Work Removal**

All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer.

[1925, S.B. 84.]

**Art. 5969. Appeal Supersedes Order of Removal**

When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment shall deem it to the public interest to suspend such officer from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided herein.

[Acts 1925, S.B. 84.]

**Art. 5970. By District Judge**

All district and county attorneys, county judges, commissioners, clerks of the district and county courts and single clerks in counties where one clerk discharges the duties of district and county clerk, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace and all county officers now or hereafter existing by authority either of the Constitution or laws, may be removed from office by the judge of the district court for incompetency, official misconduct or becoming intoxicated by drinking intoxicating liquor, as a beverage, whether on duty or not; provided such officer shall not be removed for becoming intoxicated when it appears upon the trial of such officer that such intoxication was produced by drinking intoxicating liquors upon the direction and prescription of a duly licensed practicing physician of this State.

[Acts 1925, S.B. 84.]

**Art. 5971. Cause to be in Writing**

In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury.

[Acts 1925, S.B. 84.]

**Art. 5972. "Incompetency"**

(a) By "incompetency" as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office.

(b) In the case of a justice of the peace who is not a licensed attorney, "incompetency" also includes the failure to successfully complete within one year from the date he is first elected, or if he is in office on the effective date of this Act, one year from the effective date of this Act, a forty-hour course in the performance of his duties and a twenty-hour course each year thereafter; said course to be completed in any accredited state-supported school of higher education.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 1110, ch. 241, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1758, ch. 640, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1971 amendatory act provided: "Persons having served two terms or more as a duly elected justice of the peace are exempted from provisions of subsection (b) of this Act."

**Art. 5973. "Official Misconduct"**

By "official misconduct," as used herein with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the law; and includes any wilful or corrupt failure, re-

fusal or neglect of an officer to perform any duty enjoined on him by law.

[Acts 1925, S.B. 84.]

**Art. 5974. Articles Apply to Cities**

The two preceding articles shall apply also to mayors and aldermen.

[Acts 1925, S.B. 84.]

**Art. 5975. Failure to Give Bond**

All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court.

[Acts 1925, S.B. 84.]

**Art. 5976. Proceedings**

The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resided, by a citizen of the State who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county.

[Acts 1925, S.B. 84.]

**Art. 5977. Requisites of Petition**

The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall in every instance be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same.

[Acts 1925, S.B. 84.]

**Art. 5978. General Issue Submitted**

In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained.

[Acts 1925, S.B. 84.]

**Art. 5979. Citation**

After such petition is filed, the person or persons so filing the same shall make a written

application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. Upon the order being granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. The clerk may demand of the relator security for costs as in other cases.

[Acts 1925, S.B. 84.]

#### Art. 5980. Time to Answer

In no case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other suits.

[Acts 1925, S.B. 84.]

#### Art. 5981. How Trial Conducted

The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases.

[Acts 1925, S.B. 84.]

#### Art. 5982. How Suspended; Action on Bond of Appointee

At any time after the issuance of the order for the citation, as herein provided, the District Judge may, if he sees fit, suspend temporarily from office, the officer against whom the petition is filed, and appoint for the time being, some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the Judge may name, with at least two good and sufficient sureties, and on such conditions as the Judge may see fit to impose, to pay the person so suspended from office, all damages and costs that he may sustain by reason of such suspensions from office, in case it should appear that the cause or causes of removal are insufficient or untrue; provided, however, that in any action to recover upon such bond it shall be necessary to allege and prove that the person so temporarily appointed actively aided and instigated the filing and prosecution of such removal suit, and, that within ninety days after such person's execution of such bond, the person so removed, shall serve or cause to be

served upon such temporary appointee and his bondsmen, notice, in writing, stating that such person so removed intends and expects to hold such temporary appointee and his bondsmen liable upon such bond, and the grounds of such claimed liability.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 138, ch. 56, § 1.]

#### Art. 5982-a. Compensation of Temporary Officer; Retention of Fees Earned and Collected

That when any District Judge, acting under the authority reposed in him by Title 100 of the Revised Civil Statutes of the State of Texas (1925) shall suspend temporarily from office any person holding the office of County Clerk in any County, having a population of more than Two Hundred Seventy-five Thousand persons, according to the last preceding Federal Census, and shall appoint for the time being some other person to discharge the duties of such office, such person so appointed for the time being shall be allowed to have and retain out of the fees earned and collected by him as such temporary officer the same amount now allowed or hereafter to be allowed and provided by law as compensation for the person so removed by such District Judge; and provided, further, that such person appointed by such District Judge shall be allowed to have and retain out of fees earned and collected by him during a period of less than one year an amount proportionate to the amount allowed by law to the person so removed in the proportion which the fraction of the year he serves bears to the whole year. Such compensation herein provided shall belong solely to such temporary officer and shall be payable to him monthly out of fees earned and collected; and such compensation shall be his absolutely, and such temporary officer shall not be required to account to the officer so removed for such compensation, nor shall such officer so removed be permitted to recover such compensation from such temporary officer in any action at law or in equity.

[Acts 1935, 44th Leg., p. 138, ch. 56, § 2.]

#### Art. 5982-b. Removed Officer Compensated Out of General Fund of County on Establishing Right to Office

If the officer so removed from such office shall by final judgment establish his right to such office he shall be paid from the General Fund of the County a sum equal to all compensation received by such temporary officer during the period of his occupancy of such office.

[Acts 1935, 44th Leg., p. 138, ch. 56, § 3.]

#### Art. 5983. Appeal or Writ of Error

An appeal or writ of error to the Court of Civil Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a

bond for all the costs that have or may accrue in the district and Courts of Civil Appeals.

[Acts 1925, S.B. 84.]

#### Art. 5984. Against District Attorneys

Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district.

[Acts 1925, S.B. 84.]

#### Art. 5985. Criminal District Attorney

Under the name of "district attorney," as used in this chapter, is included any criminal district attorney and the judge of each criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the State have in reference to all county officers.

[Acts 1925, S.B. 84.]

#### Art. 5986. Not Retroactive

No officer in this State shall be removed from office for any act he may have committed prior to his election to office.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 499, § 1.]

#### Art. 5987. Precedence on Appeal

In these cases, an appeal may be taken or writ of error be made returnable to the Court of Civil Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered.

[Acts 1925, S.B. 84.]

#### Art. 5988. Notary Public

Any notary public indicted for and convicted of any wilful neglect of duty or official misconduct shall be removed from office. The order for his removal shall in each instance be embodied in the judgment of the court.

[Acts 1925, S.B. 84.]

#### Art. 5989. Public Weigher

Any public weigher who is incompetent or shall be guilty of official misconduct shall be removed by the Governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature.

[Acts 1925, S.B. 84.]

#### Art. 5990. District Clerk Removed

The clerk of the district court may also be removed by information or by indictment and conviction by a petit jury. When so removed, the order for his removal shall be embodied in the judgment of conviction.

[Acts 1925, S.B. 84.]

5 West's Tex.Stats. & Codes—9

#### Art. 5991. Mayor and Aldermen.

The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any ordinance of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city.

[Acts 1925, S.B. 84.]

#### Art. 5992. Alderman

When written sworn complaint charging any alderman with any act or omission which may be cause for his removal shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case.

[Acts 1925, S.B. 84.]

#### Art. 5993. Against Mayor

When any such complaint is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for a trial of the case, and notify the mayor and other aldermen to appear on such day. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial.

[Acts 1925, S.B. 84.]

#### Art. 5994. Procedure

The rules governing other proceedings and trials in the courts of justices of the peace shall govern. If two-thirds of the members of the court present upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, the presiding officer of the court shall enter judgment, removing such mayor or aldermen from office and declaring such office vacant. If the defendant be found not guilty, judgment shall be entered accordingly. Any municipal officer so removed shall not be eligible to re-election to the same office for two years from the date of such removal.

[Acts 1925, S.B. 84.]

#### Art. 5995. Not to Apply to All Cities

The provisions of this title as to municipal officers shall not apply to any town or city except such as are incorporated under the general laws of this State.

[Acts 1925, S.B. 84.]

**Art. 5996. Nepotism**

Whoever violates any provision of the Penal Code relating to nepotism and the inhibited acts connected therewith shall be removed from his office, clerkship, employment or duty, as therein mentioned. Such removal from office shall be made in conformity to the provisions of the Constitution of this State concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. [Acts 1925, S.B. 84.]

**Art. 5996a. "Nepotism"**

No officer of this State nor any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, nor any officer or member of any State district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, nor any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever; provided, that nothing herein contained, nor in any other nepotism law contained in any charter or ordinance of any municipal corporation of this State, shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing, voting for, or confirming the appointment, or to the election or appointment of the officer or member related to such employee in the prohibited degree.

[1925 P.C.; Acts 1949, 51st Leg., p. 227, ch. 126, § 1; Acts 1951, 52nd Leg., p. 159, ch. 97, § 1.]

**Art. 5996b. Officers Included**

The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant

Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. This enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions.

[1925 P.C.]

**Art. 5996c. Evading Nepotism Law by Trading**

No officer or other person included within any provision of this law shall appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment or duty of any person whose services are to be rendered under his direction or control and to be paid for, directly or indirectly out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any provision of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment to any such office, position, or clerkship, employment or duty of any person whomsoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment.

[1925 P.C.]

**Art. 5996d. Shall Not Approve Account**

No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible.

[1925 P.C.]

**Art. 5996e. Official Stenographer**

No district judge shall appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district.

[1925 P.C.]

**Art. 5996f. Punishment**

Whoever violates any provision of the five preceding articles shall be guilty of a misdemeanor involving official misconduct, and shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 5996g. Exceptions**

That nothing in this law shall apply to any appointment to the office of a notary public, or to the confirmation thereof; or to the appointment of a page, secretary, attendant or other employee by the Legislature for attendance on any member of the Legislature who, by reason

of physical infirmities, is required to have a personal attendant.

[1925 P.C.]

**Art. 5997. Suits by Attorney General**

All quo warranto proceedings mentioned shall be instituted by the Attorney General in any district court of Travis County or in the district court of the county in which the defendant resides; the district or county attorney of the county in which such suit may be filed shall assist the Attorney General therein whenever he shall so direct.

[Acts 1925, S.B. 84.]

# TITLE 101

## OFFICIAL BONDS

### Article

- 5998. Sureties.
- 5999. Depository of Bonds.
- 6000. Bond to be Recorded.
- 6001. Sureties Relieved.
- 6002. Requiring New Bond.
- 6003. Suit on Bond.
- 6003a. Bond to Inure to Benefit of Persons Aggrieved; Limitations.
- 6003b. State Employee Bonding Act.
- 6003c. Filing Bond With Secretary of State.

#### Art. 5998. Sureties

The official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

[Acts 1925, S.B. 84.]

#### Art. 5999. Depository of Bonds

The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.

[Acts 1925, S.B. 84.]

#### Art. 6000. Bond to be Recorded

All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and safely kept and recorded by the county clerk in a book kept for that purpose.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6001. Sureties Relieved

Any surety on any official bond of any county officer may apply to the commissioners court to be relieved from his bond, and the county clerk shall thereupon issue a notice to said officer, with a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county, and said officer so notified shall upon such service cease to exercise the functions of his office, except to preserve any records or property in his charge, and in case of a sheriff or constable, to keep prisoners, preserve the peace and execute warrants of arrest, and his office

shall become vacant unless he give a new bond within twenty days from the time of receiving such notice. If a new bond is given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of the new bond. [Acts 1925, S.B. 84.]

#### Art. 6002. Requiring New Bond

When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom.

[Acts 1925, S.B. 84.]

#### Art. 6003. Suit on Bond

No official bond of any state, county or precinct officer shall be void upon first recovery, but may be sued upon by the party injured in separate actions until exhausted.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 657, ch. 270, § 1.]

#### Art. 6003a. Bond to Inure to Benefit of Persons Aggrieved; Limitations

In all suits on account of the defalcation of, or misapplication, or misappropriation of money by, any public officer in this State the official bond or bonds of such officers executed after this Act takes effect shall inure to the benefit of the persons aggrieved by such defalcation, misapplication, or misappropriation occurring during the period covered by such bonds, and that for all purposes of limitation such suits by such persons on such bonds shall be considered and treated as actions for debt founded upon a contract in writing and governed by the four-year Statute of Limitation.

[Acts 1941, 47th Leg., p. 383, ch. 213, § 1.]

#### Art. 6003b. State Employee Bonding Act

##### Title

Sec. 1. This shall be known and cited as the "State Employee Bonding Act."

##### Intent of Legislature; Uniform Standards

Sec. 2. It is the intent of the Legislature in enacting the provisions of this Act to prescribe uniform standards for the bonding of State officers and employees in order to provide adequate protection against loss, and to prescribe a uniform bond covering officers and employees of all agencies, departments, boards,

commissions, institutions, courts, and institutions of higher education of the State of Texas.

#### Definitions

Sec. 3. For the purposes of this Act the term:

(a) "Bond" means any agreement under which an insurance company becomes obligated as surety to pay, within certain limits, loss caused by the dishonest acts of officers and employees, or to pay for loss caused by failure of officers or employees to faithfully perform the duties of the offices or positions held.

(b) "Agency" means any department, commission, board, institution, court, institution of higher education, or soil conservation district of the State of Texas, but shall not include any other political subdivision of the State.

(c) "Position Schedule Honesty Bond" means any bond covering the honesty of any employee who may occupy and perform the duties of the positions listed in the schedule attached to the bond, each position being covered for a specific amount.

(d) "Honesty Blanket Position Bond" means any bond which covers all positions occupied by officers or employees of an agency for a uniform specified amount applicable to each position.

(e) "Faithful Performance Blanket Position Bond" means any bond which covers all positions in an agency, conditioned that the officers and employees of such agency will faithfully perform the duties of such officers and employees.

(f) "Specific Excess Indemnity" means additional bond coverage of specified positions over and above the coverage specified on a "Position Schedule Honesty Bond" an "Honesty Blanket Position Bond" or a "Faithful Performance Blanket Position Bond."

#### Bonding Agreements; Types of Bonds

Sec. 4. The head of any agency, except as otherwise provided for in this Act, is hereby authorized to enter into bonding agreements with an insurance company authorized to do business in the State of Texas for any of the following types of bonds, but no agency or head of any agency shall enter into agreements whereby more than one type of bond is applicable to officers or employees of the agency:

(a) A Position Schedule Honesty Bond may be used when not more than a combined total of ten (10) officers or employees in any particular agency or board are to be bonded.

(b) Blanket Position Bond may be used when three (3) or more officers or employees in a particular agency are to be bonded. Specific excess indemnity may be carried on certain specified positions, provided the total of the blanket bond cover-

age and the specific excess indemnity for any particular position does not exceed Ten Thousand Dollars (\$10,000).

#### Maximum Coverage; Specific Excess Indemnity Bonds

Sec. 5. (a) Unless otherwise provided for in this Act, the maximum coverage on any State official or State employee shall not exceed the sum of Ten Thousand Dollars (\$10,000). The head of each agency, unless otherwise provided for in this Act, shall determine the coverage need of the agency within this limit.

(b) The Comptroller of Public Accounts and the State Treasurer may, in addition to entering into agreements for Position Schedule Honesty Bond or Blanket Position Honesty Bond, are each authorized to enter into agreements for Specific Excess Indemnity Bonds and to enter into agreements for Faithful Performance Blanket Position Bonds.

(c) All bonds for Specific Excess Indemnity in excess of the Ten Thousand Dollars (\$10,000) hereinabove specified, shall be entered into only upon the recommendation and approval of the State Auditor, when, in his judgment, such excess coverage is necessary to adequately protect the State.

#### Forms; Payment of Premiums; Copies; Filing; Term

Sec. 6. (a) All bonds provided for in this Act shall be on forms approved by the State Board of Insurance, and shall be written only in companies authorized to act as surety in the State of Texas.

(b) The premiums on all bonds provided for in this Act shall be paid by the State of Texas as obligee out of moneys appropriated for such purpose by the Legislature, or moneys appropriated by the Legislature to any agency for administration or administration expense, or for operation expense, or for general operation expense, or for maintenance, or miscellaneous expense, or for contingencies, or out of moneys in possession of an agency outside the State Treasury and available to such agency for expenditure for operational expense of the agency.

(c) All bonds provided for in this Act shall be written in triplicate originals. One original shall be filed in the office of the Secretary of State; one original shall be filed in the office of the Comptroller of Public Accounts; and one original shall be filed in the office of the agency covered by the bond, and each agency is charged with the responsibility of the custody of such bonds.

(d) Contracts or agreements for bond coverage may be purchased on a three-year basis, and the bond coverage shall cover the particular office or position rather than the person occupying the office or position at the time the agreement is entered into.

#### Actions to Recover Losses

Sec. 7. The Attorney General of Texas, upon notice by any agency of any loss covered by any bond provided for in this Act, shall

have the authority to proceed immediately to institute or cause to be instituted any action to recover such loss, and to take any action necessary for the recovery of the obligation of the surety. All recoveries of losses and all recoveries under bonds covered by the provisions of this Act shall be deposited to the credit of the fund from which the loss occurred.

[Acts 1959, 56th Leg., p. 855, ch. 383.]

**Art. 6003c. Filing Bond with Secretary of State**

Sec. 1. Each member of the governing body of political subdivisions of the State created

pursuant to Section 59 of Article XVI or Section 52 of Article III of the Texas Constitution who is required by law to file an official bond shall file a copy of the same with the secretary of state within 10 days from the date such bond is required by law to be filed.

Sec. 2. Each member of such a governing body holding office on the effective date of the Act shall file a copy of his official bond with the secretary of state within 60 days after the effective date of this Act.

[Acts 1967, 60th Leg., p. 1374, ch. 594, eff. Aug. 28, 1967.]

# TITLE 102

## OIL AND GAS

### GENERAL PROVISIONS

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### GENERAL PROVISIONS

#### Art. 6004. Casing

The owner or operator of any well being drilled for oil or gas shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel

casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated.

[Acts 1925, S.B. 84.]

#### Art. 6005. Plugging Abandoned Wells

##### Definitions

Sec. 1. In this Article, unless the context requires a different definition,

(1) "well" means a hole drilled for the purpose of:

- (a) producing oil or gas; or
- (b) injecting any fluid or gas into the ground in connection with the exploration or production of oil or gas; or
- (c) obtaining geological information by taking cores or through seismic operations;

(2) "operator" means a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation;

(3) "nonoperator" means a person who owns a working interest in a well at the time the well is about to be abandoned or ceases operation and is not an "operator" as defined in Section 1, paragraph (2), herein. It is understood that the terms "operator" and "nonoperator" as defined in this Article do not mean a royalty interest owner or an overriding royalty interest owner;

(4) "landowner" means the owner of the land upon which the well is situated at the time the well is abandoned and one who holds a mineral interest therein;

(5) "person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor and a fiduciary or representatives of any kind;

(6) "Commission" means the Railroad Commission of Texas.

##### Duty of Operator

Sec. 2. The operator of a well shall properly plug the well when required and in accordance with the Commission's rules and regulations which are in effect at the time of plugging.

##### Duty of Nonoperator

Sec. 3. If the operator of a well fails to comply with Section 2 of this Article, then each nonoperator is responsible for his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules and regulations of the Commission in effect at the time the responsibility attaches.

##### Duty of Landowner

Sec. 4. If the operator fails to comply with Section 2 of this Article and the nonoperator fails to comply with Section 3 of this Article, then, in that event each landowner is responsible for his proportionate share of the cost of proper plugging of the well within a reasonable time, according to the rules and regulations of the Commission in effect at the time the responsibility attaches.

##### Cause of Action

Sec. 5. If a landowner plugs or replugs a well under Section 4 of this Article then the landowner shall have a cause of action against the operator and nonoperator or either of them, as the case may be, in any court of competent jurisdiction for all reasonable costs and expenses incurred in the plugging or replugging of the well, to be secured by a lien upon the interest of the operator and the nonoperator, or either of them as the case may be, in the oil and gas underlying the lease upon which the well is located and upon the interest of the operator and the nonoperator, or either of them, as the case may be, in all fixtures, machinery and equipment found or used on said lease; provided, however, that if the landowner is responsible for the well not being properly plugged, then the said landowner shall not have a cause of action under this Article.

##### Recovery Against Others

Sec. 6. If an operator, nonoperator or landowner owns only a partial interest in the well, oil and gas or land, as the case may be, and said operator, nonoperator or landowner pays a larger proportion of the cost of plugging the well than his proportionate interest in the well, oil and gas or land, as the case may be, then he shall have a cause of action against the other operators, nonoperators or landowners, as the case may be, for their proportionate shares of the cost of plugging.

##### Duty of Commission

Sec. 7. (a) If it comes to the Commission's attention that a well which has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from said well, the Commission, after due notice, at a hearing, shall determine whether or not the well was properly plugged under Section 2, Section 3 or Section 4 of this Article.

(b) If the Commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules and regulations of the Commission in effect at the time the order is issued. If the operator cannot be found or is no longer in existence, or if the operator has no assets with which to properly plug the well, the Commission shall order the nonoperators to plug the well according to the rules and regulations of the Commission in effect at the time the order is issued. If the nonoperators cannot be found or are no longer in existence, or if the nonoperators have

no assets with which to properly plug the well, the Commission shall order the landowners to properly plug the well according to the rules and regulations of the Commission in effect at the time the order is issued.

**Power of the Commission**

Sec. 8. (a) Upon the determination by the Commission under Section 7(a) of this Article that such a well has not been properly plugged, or needs replugging, the Commission, through its employees or through a person acting as agent for the Commission, may plug or replug such a well, if

(1) the well was properly plugged according to regulations in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator, nonoperator nor the landowner properly plugged the well, and

(A) neither the operator, nonoperator nor the landowner can be found; or

(B) neither the operator, nonoperator nor the landowner has assets with which to properly plug the well.

(b) The Commission, its employees, or its agents, or the operator, or the nonoperator, or the landowner may enter the land of another for the purpose of plugging or replugging the well which the Commission has determined, under the provisions of Section 7(a), has not been properly plugged. The Commission, its employees, its agents, the operator, nonoperator and the landowner shall not be liable for any damages which may occur as a result of acts done or omitted to be done by them or each of them in a good faith effort to carry out the provisions of this Article.

**Cause of Action of State**

Sec. 9. If the Commission plugs a well under Section 8 of this Article, the State has a cause of action for all reasonable expenses incurred in plugging or replugging the well according to the rules and regulations of the Commission in effect at the time the well is plugged or replugged. The cause of action is first against the operator, to be secured by a lien upon his interest in the oil and gas in the land and all his fixtures, machinery and equipment found or used on the land where the well is situated, and second, against the nonoperator at the time the well should have been plugged, to be secured by a lien upon his interest in the oil or gas in the land, and third, against the landowner, to be secured by a lien upon his interest in the land.

**Accepting Money From Private Persons**

Sec. 10. The Commission may accept money from private persons and use the money to plug or replug any well. Paying money to the Commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the Commission is not admissi-

ble against the person in any suit in which the person's obligation to plug a well is an issue, and introducing the evidence is a compulsory ground for mistrial.

**Commission Enforcement**

Sec. 11. In addition to the powers specifically granted to the Commission under the provisions of this Article, the Commission may enforce the provisions of this Article or any rule, regulation or order of the Commission promulgated hereunder, in the same manner and upon the same conditions as provided for in Title 102 of the Revised Civil Statutes of Texas, 1925.

**Appeals to Courts**

Sec. 12. Any person affected hereby may sue to test the validity of any rule, regulations or order promulgated by the Commission under this Article in the same manner, upon the same conditions, and to the same court or courts, as prescribed for suits testing the validity of rules, regulations and orders of the Commission promulgated under the general oil conservation statutes of this State.

**Protection of Waters Against Pollution**

Sec. 13. The conservation and development of all of the natural resources of this State are hereby declared a public right and duty. It is further hereby declared that the protection of waters and lands of the State against pollution or the escape of oil or gas is in the public interest. It is therefore necessary and desirable in the exercise of the police power of the State to provide additional means whereby wells which are drilled for the exploration, development or production of oil or gas, or as injection or salt water disposal wells, and which have been abandoned and are leaking salt water, oil, gas or other deleterious substances into fresh water formations or upon the surface of the land, may be plugged, replugged or repaired, by or under the authority and direction of the Railroad Commission of Texas.

[Acts 1925, S.B. 84; Acts 1965, 59th Leg., p. 762, ch. 355, § 1.]

**Art. 6006. Illumination**

No person, co-partnership or corporation shall use natural gas for illuminating purposes by what are known as flambeau lights. Nothing herein shall prohibit the use of "Jumbo" burners or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m.

[Acts 1925, S.B. 84.]

**Art. 6007. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

## Art. 6008. Production and Use of Natural Gas

## Declaration of Policy

Sec. 1. In recognition of past, present, and imminent evils occurring in the production and use of natural gas, as a result of waste in the production and use thereof in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production.

## Definitions

Sec. 2. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when used in this Article to wit:

(a) "Commission" means the Railroad Commission of Texas;

(b) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind;

(c) The term "Common Reservoir" as used in this Article shall mean any oil and/or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil and/or gas;

(d) The term "gas well" is any well (a) which produces natural gas not associated or blended with crude petroleum oil at the time of production, or (b) which produces more than one hundred thousand (100,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon, or (c) which produces natural gas from a formation or producing horizon productive of gas only encountered in a well bore through which crude petroleum oil also is produced through the inside of another string of casing.

(e) The term "oil well" is any well which produces one (1) barrel or more of crude petroleum oil to each one hundred thousand (100,000) cubic feet of natural gas.

(f) "Dry Gas" is any natural gas produced from a stratum that does not produce crude petroleum oil.

(g) The term "sour gas" shall mean any natural gas containing more than one and one-half ( $1\frac{1}{2}$ ) grains of hydrogen sulphide per one hundred (100) cubic feet or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet, or gas which in its natural state is found by the Commission to be unfit for use in generating light or fuel for domestic purposes.

(h) The term "sweet gas" shall mean all natural gas except "sour gas" and "casinghead gas."

(i) The term "casinghead gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(j) The term "natural gasoline" shall apply to gasoline manufactured from casinghead gas or from any natural gas.

(k) For the purposes of this Article, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casinghead) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

## Waste Defined and Prohibited

Sec. 3. The production, transportation, or use of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(a) The operation of any oil well, or wells with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum or part thereof capable of producing gas in paying quantities.

(c) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(d) Permitting any natural gas well to burn wastefully.

(e) The creation of unnecessary fire hazards.

(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, or operating well or wells as to reduce or tend to reduce the ultimate recovery of natural gas from any pool.

(g) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(h) The production of natural gas in excess of transportation or market facilities, or reasonable market demand for the type of gas produced.

(i) The use of natural gas for the manufacture of carbon black without first having extracted the natural gasoline content from such gas, except where it is utilized

in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet of gas it shall not be necessary to first extract the natural gasoline content from such gas.

(j) The use of sweet gas produced from a gas well for the manufacture of carbon black unless it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet and unless such sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas.

(k) Permitting any natural gas produced from a gas well to escape into the air before or after such gas has been processed for its gasoline content.

(l) The production of natural gas from a well producing oil from a stratum other than that in which the oil is found, unless such gas is produced in a separate string of casing from that in which the oil is produced.

(m) The production of more than one hundred thousand (100,000) cubic feet of gas to each barrel of crude petroleum oil unless such gas is put to one or more of the uses authorized for the type of such gas so produced under allocations made by the Commission.

#### Oil or Gas Wells

Sec. 4. (a) If oil and/or gas be produced through different strings of casing set in the same well bore, the inner string through which oil and/or gas be produced shall be regarded as one well, and each successive additional string of casing through which oil and/or gas shall be produced, from a different producing horizon, the others producing through the same well bore, shall be regarded as another well.

(b) No person in possession of or operating any oil well shall produce from such well natural gas found in a horizon productive of natural gas only.

#### Commission's Authority to Determine Gas-Oil Ratio

Sec. 5. The Commission is given authority to fix and determine the gas-oil ratio of all oil wells in this State, but nothing in this Act shall be construed to authorize the limitation of the production of marginal wells as such marginal wells are defined, below the amount fixed by statute. If any restriction imposed by the Commission upon the production of oil from any oil well operates to increase the gas-oil ratio of such well so as to then classify it as a gas well under the provisions of this Article, such well shall be deemed to be an oil well nevertheless.

#### Commission to Make and Enforce Rules and Regulations

Sec. 6. The Commission shall make and enforce rules, regulations, or orders for the conservation of natural gas, to prevent the waste thereof, and otherwise to accomplish the pur-

poses of this Article, including rules, regulations, or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of natural gas in drilling and producing operations and in the piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent natural gas and water from escaping from the strata in which they are found into other strata.

(6) To require records to be kept and reports made.

(7) To provide for the issuance of permits, and other evidences of permission when the issuance of such permits,<sup>1</sup> or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law.

<sup>1</sup> So in enrolled bill. Session Laws duplicate words "or permission when the issuance of such permits."

#### Limiting Escape of Gas Encountered in Well and Purpose of Utilization of Gas

Sec. 7. After the expiration of ten (10) days from the time of encountering gas in a gas well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized for the following purposes:

(1) No sweet gas shall be utilized except for:

(a) Light or fuel.

(b) Efficient chemical manufacturing, other than the manufacture of carbon black, provided, however, that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black where it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet of gas.

(c) Bona fide introduction of gas into oil, or gas bearing horizon, in order to maintain or increase the rock pressure or otherwise increase the ultimate recovery of oil or gas from such horizon.

(d) The extraction of natural gasoline therefrom when the residue is returned to the horizon from which it is produced.

(2) In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for ef-

ficient chemical manufacturing purposes including the manufacture of carbon black provided it is utilized in a plant producing a recovery of not less than one pound of carbon black to each one thousand (1,000) cubic feet of gas, and provided further that the gasoline content is removed and saved from such sour gas before the same is utilized for carbon black.

(3) Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

(4) Any producer of either sweet or sour gas or casinghead gas may use the same as gas lift in the bona fide production of oil where such gas is not used in excess of ten thousand (10,000) cubic feet per barrel of oil produced; provided that in order to prevent waste in any case where the facts in such case warrant it, the Commission may permit the use of additional quantities of gas to lift oil, provided all such gas so used in excess of ten thousand (10,000) cubic feet for each barrel of oil shall be processed for natural gasoline and the residue burned for carbon black when same is reproduced.

**Determination and Report to Commission of Open Flow and Rock Pressure of Natural Gas Well, Reports Open to Inspection**

Sec. 8. It shall be the duty of all persons, companies or corporations producing natural gas from any gas well to ascertain and determine during the months of January, and July, respectively, of each year hereafter, through appropriate tests, to be made in the presence of and under the supervision of a representative of the Commission, and under uniform and generally recognized methods, and under regulations which shall be prescribed by the Commission, the open flow and rock pressure of each gas well from which natural gas shall be produced, and verified reports thereof shall be filed with the Commission on or before the tenth day of each of the months aforesaid; which said reports shall be kept on file with the Commission and shall become a permanent public record and shall be open to the inspection and examination of the public, and which said reports shall disclose the name of the representative of the Commission who was actually present when such tests were made. If any person producing gas from the same common reservoir be dissatisfied with the test as made and reported, such person may demand a second test to be made in the manner herein provided and in the presence of such person or his representative.

**Inspection of Meters by Agent of Railroad Commission**

Sec. 9. The Railroad Commission shall require one of its duly authorized agents to inspect, read or test any meter, or meters, through which natural gas is being measured, or gauged, upon the request of any lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest natural gas is being produced.

**Commission to Prorate and Regulate Daily Production**

Sec. 10. It shall be the duty of the Commission to prorate and regulate the daily gas well production from each common reservoir in the manner and method herein set forth. The Commission shall prorate and regulate such production for the protection of public and private interest:

(a) In the prevention of waste as "waste" is defined herein;

(b) In the adjustment of correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell such gas as permitted in this Article.

**Commission to Exercise Authority, When**

Sec. 11. The Commission shall exercise the authority to accomplish the purpose designated under item (a) of Section 10 when the presence or imminence of waste is supported by a finding based upon the evidence introduced at a hearing to be held as herein provided.

The Commission shall exercise the authority to accomplish the purpose designated under item (b) of Section 10 when evidence introduced at a hearing to be held as herein provided will support a finding made by the Commission that the aggregate lawful volume of the open flow or daily potential capacity to produce of all gas wells located in a common reservoir, is in excess of the daily reasonable market demand for gas from gas wells that may be produced from such common reservoir, to be utilized as permitted in this Article.

**Determination of Status of Gas Production; Proration and Regulation**

Sec. 12. It shall be the duty of the Commission to determine the status of gas production from all reservoirs in this state. If and when the Commission finds that waste exists or is imminent in the production of gas from any reservoir, or that the capacity of the wells to produce gas from any reservoir exceeds the market demand for gas from such reservoir, the Commission shall then proceed by proper order to prorate and regulate the gas production from such reservoir on a reasonable basis. On or before the 20th day of each month, the Commission, after notice and hearing, shall determine (1) the lawful market demand for gas to be produced from each such reservoir during the following month; and (2) the volume of gas that can be produced from such reservoir and each well therein during the following month, without waste. The Commission shall then fix the monthly reservoir allowable of gas to be produced from such reservoir at the lawful market demand therefor or at the volume that can be produced from such reservoir without waste, whichever is the smaller quantity. The monthly reservoir allowable shall be allocated among all wells entitled to produce gas therefrom so as to give each well its fair share of the gas to be produced from the reservoir, provided that each well shall be restricted to

the amount of gas that can be produced from it without waste. The volume of gas so allocated to each well shall be regarded as the monthly allowable for such well. The daily market demand for gas, and the daily allowable, shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month.

#### Factors in Determining Daily Allowable Production

Sec. 13. In determining the daily allowable production for each gas well the Commission shall take into account the size of the tract segregated with respect to surface position and common ownership upon which such gas well or wells are located; the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and all other factors which are pertinent; provided that the Commission shall not take into account the size of the tract upon which any gas well or wells are located in excess of the efficient drainage area of such well or wells, producing at twenty-five per cent (25%) of the daily productive capacity, which drainage area shall be determined by the Commission. In ascertaining the drainage area of a well, the Commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

#### Production and Sale of Gas From Common Reservoir Where Demand is Seasonal

Sec. 14. In order to adjust the correlative rights and opportunities of each owner to produce, use and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion thereof fluctuates from month to month, the Commission may permit the wells in such reservoir to be produced in excess of the monthly allowable if no waste is occasioned thereby, provided (1) no well shall in any one month be permitted to produce in excess of two (2) times its monthly allowable or upon application to the Commission where there is shown to exist, or there is threatened and unforeseen, an emergency requiring an increase in the demand for such gas from such reservoir which cannot otherwise be satisfied from such reservoir, then such wells, under such application, may be produced as herein authorized but not in excess of four (4) times each of said well's monthly allowable; or to produce at a rate in excess of twenty-five per cent (25%) of the daily producing capacity of such well as found by the Commission; that (2) no well shall ever be allowed to produce in excess of twice its allowable for more than two (2) months in any period of six (6) months beginning on the 1st day of March and September of each year, and when any well has pro-

duced twice its allowable or more during any such six (6) month period as above it shall be closed in until its production and allowable are in balance; and that (3) the Commission shall, on the 1st day of March and September of each year, restrict production from all wells that are then overproduced to such fractional part of their monthly allowable as will bring the accumulated allowables and the accumulated monthly production in balance during the next six (6) months. If such over production is not balanced during such six (6) month period, then the overproduced well shall be shut in until its production and allowable are in balance. In like manner the Commission may by appropriate order permit any gas well to be underproduced for a period of six (6) consecutive months and may allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six (6) month period.

#### Percentage of Daily Productive Capacity Allowable

Sec. 15. Nothing contained in this Article shall require that the production from any gas well with a daily natural open flow of two hundred thousand (200,000) cubic feet of natural gas or more to be restricted to a quantity less than fifty thousand (50,000) cubic feet of natural gas daily; and nothing herein shall require that the production from any gas well with a daily natural open flow of less than two hundred thousand (200,000) cubic feet of gas be reduced to a quantity less than twenty-five per cent (25%) of its natural open flow.

In all common reservoirs producing both sweet and sour gas, no gas well shall be permitted to produce in excess of twenty-five per cent (25%) of its daily productive capacity; provided the Commission, upon a finding that reservoir conditions require that such percentage be increased to prevent waste, and that such increase will not create a drainage condition as between sweet and sour gas lands, may authorize an increase in such allowable production. Where the allowable production theretofore allocated to any well is more than fifteen per cent (15%) of its daily producing capacity, and the Commission finds that the production of its daily allowable from such well will cause waste due to the intermingling of sweet and sour gas, the Commission may order the production from such well restricted to fifteen per cent (15%) of its daily producing capacity, but this sentence shall not be construed to militate against the right of the Commission to fix the allowable production of any well below fifteen per cent (15%) of its daily producing capacity in carrying out the requirements of Sections 13 and 14 of this Act.

#### Production in Violation of Valid Orders

Sec. 16. It shall be unlawful for any person to produce gas from a gas well in violation of the valid orders of the Railroad Commission of Texas.

**Restriction as to Wells Producing Gas From One Stratum and Oil and Gas From Another Stratum**

Sec. 17. Where gas is produced from one stratum and oil and gas is produced from another stratum in the same well bore, the Commission shall take into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only and may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to said well if it produced dry gas and may restrict the dry gas production accordingly.

**Increase of Demand for Gas**

Sec. 18. When unforeseen contingencies increase the demand for gas required by any distributor, transporter or purchaser to an amount in excess of the total allowable production of the wells to which he is connected, such distributor, transporter or purchaser is authorized to increase his take ratably from all such wells in order to supply his demand for gas, provided, however, that notice of such increase and the amount thereof shall be given to the Commission within five (5) days; and provided further that the Commission, at its next hearing, shall adjust the inequality of withdrawals caused by such increase in fixing the allowable production of the various wells in the common reservoir or zone.

**Zoning Common Reservoirs**

Sec. 19. If the Commission finds upon consideration of the evidence introduced at a hearing that either or both of the purposes designated under Section 10 of this Article may be more adequately accomplished by zoning a common reservoir, the Commission shall zone such common reservoir. If the Commission zones such common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this Article. The Commission shall allocate to each zone its just proportion of the market demand for gas from the common reservoir, and shall establish appropriate rules and regulations applicable to each zone and shall have the right to adjust its orders to the practicable conditions which exist and to enter any reasonable order which is necessary to effectuate the purpose of this law. The Commission is expressly authorized to segregate a sour gas area from a sweet gas area and shall not be required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

**Exclusion of Well Not Utilized in Allocating Daily Allowable Production From Reservoir or Zone**

Sec. 20. In the event the Commission finds that the owner of any gas well has failed or refused to utilize or sell the allowable production from his well when such owner has been offered a connection or market for such gas at a reasonable price, such well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone

in which same is located until the owner thereof signifies to the Commission his desire to utilize or sell such gas. In all other cases all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

Sec. 21. Repealed by Acts 1949, 51st Leg., p. 477, ch. 259, § 4.

**Discretion of Commission**

Sec. 22. The Commission shall be vested with a broad discretion in administering this law, and to that end shall be authorized to adopt any and all rules, regulations or orders which it finds are necessary to effectuate the provisions and purposes of said law.

**Penalty and Suits to Enforce**

Sec. 23. Any person violating any of the provisions of this Article shall be liable to a penalty not to exceed One Thousand Dollars (\$1,000) for each offense, and each day's violation shall be a separate offense. Such penalty may be recovered by the State of Texas with the cost of suit in a civil action instituted in Travis County or in the County where the violation occurred by the Attorney General or by the County or District Attorney when joined by the Attorney General of Texas; and any and all violations or threatened violations of this Article may be enjoined by any Court of competent jurisdiction in which the suit for penalty may be brought, and in such cases the Court may issue such writs of injunction, mandatory or prohibitory, as the facts justify.

**Appeals to Courts**

Sec. 24. Any person may appeal for judicial review from any rule, order, or regulation of the Commission made and promulgated under the authority conferred by this Article, in the same manner, upon the same conditions and to the same court or courts as prescribed in this Chapter for appeals from other rules, regulations or orders of the Commission, promulgated under the general Oil Conservation Statutes of this State.

**Repeal and Effective Date**

Sec. 25. All laws or parts of laws in conflict with any of the provisions of this Act are hereby expressly repealed; provided that on account of the absence of pipe lines necessary to accomplish transportation of gas to carbon black plants from many areas producing sour gas in one or more of the common reservoirs of this State and in as much as many wells producing sweet gas are without market outlet for gas used as light and fuel which will require considerable time to make connection after hearing to determine the allowable production, it is provided that gas from a well producing sour gas only may be utilized as provided in said Article 6008 of the Revised Civil Statutes of 1925 as amended by Acts of the First Called Session of the Forty-second Legislature, as amended by Acts of the Regular Session of the Forty-third Legislature as aforesaid, until October 1, 1935, and the gas from a well producing sweet gas may be utilized as authorized un-

der said Act as amended until August 1, 1935, at which time this Article shall be effective as to sweet gas wells; provided, however, that nothing in this Act contained shall repeal, modify or impair any of the provisions of House Bill No. 782,<sup>1</sup> relating to oil and gas conservation, enacted at this session of the Legislature, or shall impair the power of the Commission, proceeding under the oil and gas conservation laws of this State, to prevent waste.

<sup>1</sup> Articles 6014, 6014a, 6029, 6033, 6036, 6036a, 6049c, §§ 5, 7, 6049d, §§ 6, 6-a, 8, 6049e.

#### Partial Invalidity

Sec. 26. If any section or sections, clause, sentence or provision of this Article should, for any reason, be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Article, not so held, and all that portion not held invalid shall remain in full force and effect.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 2; Acts 1933, 43rd Leg., p. 222, ch. 100; Acts 1933, 43rd Leg., 1st C.S., p. 229, ch. 88, § 1; Acts 1935, 44th Leg., p. 318, ch. 120; Acts 1941, 47th Leg., p. 117, ch. 91, §§ 1, 2; Acts 1947, 50th Leg., p. 1059, ch. 453, §§ 1, 3; Acts 1949, 51st Leg., p. 477, ch. 259, § 4; Acts 1949, 51st Leg., p. 945, ch. 519, § 3; Acts 1963, 58th Leg., p. 590, ch. 213, § 1.]

### Art. 6008-1. Interstate Compact to Conserve Oil and Gas; Extension of Compact

#### Governor Authorized to Execute Agreement

Sec. 1. The Governor of the State of Texas is hereby authorized and empowered, for and in the name of the State of Texas, to execute an agreement with other states now members of the Interstate Oil Compact Commission, by the terms of which the Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States shall be extended for a period of four (4) years from its expiration date (September 1, 1947), subject to the approval of Congress.

#### Compact

Sec. 2. The Interstate Compact to Conserve Oil and Gas referred to in the above section and which was ratified, approved, and confirmed by the Regular Sessions of the Texas Legislature in 1935, 1937, 1939, 1941 and 1943, and which it is hereby proposed to extend by agreement subject to the approval of Congress, reads as follows:

### "AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

#### "ARTICLE I

"This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent.

Any oil-producing state may become a party hereto as hereinafter provided.

#### "ARTICLE II

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

#### "ARTICLE III

"Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio;

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

"(d) The creation of unnecessary fire hazards;

"(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

"(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

"The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

#### "ARTICLE IV

"Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

#### "ARTICLE V

"It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

#### "ARTICLE VI

"Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, prac-

tices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

"The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

"No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

#### "ARTICLE VII

"No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

#### "ARTICLE VIII

"This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

"The representatives of the signatory states have signed this agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

"This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified."

Sec. 3. The agreement to extend said Interstate Compact to Conserve Oil and Gas, and which the Governor of this state is hereby authorized and empowered to execute for and in the name of the State of Texas, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration

(September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

Sec. 4. The Governor of the State of Texas is further authorized and empowered, for and in the name of the State of Texas, to execute agreements for the further extension of the expiration date of the said Interstate Compact to Conserve Oil and Gas, and to determine if and when it shall be for the best interest of the State of Texas to withdraw from said Compact upon sixty days notice as provided by its terms. In the event he shall determine that the state should withdraw from said Compact, he shall have full power and authority to give necessary notice and take any and all steps necessary and proper to effect the withdrawal of the State of Texas from said Compact.

Sec. 5. The Governor shall be the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Compact to Conserve Oil and Gas, and shall exercise and perform for the State of Texas all the powers and duties as a member of the Interstate Oil Compact Commission; provided that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of said Commission. Said representative shall take the oath of office prescribed by the Constitution, which shall be filed with the Secretary of State.

[Acts 1935, 44th Leg., p. 198, ch. 81; Acts 1937, 45th Leg., p. 424, ch. 217; Acts 1939, 46th Leg., Spec.L. p. 527; Acts 1941, 47th Leg., p. 76, ch. 63; Acts 1943, 48th Leg., p. 15, ch. 15; Acts 1947, 50th Leg., p. 69, ch. 52, § 1.]

#### Art. 6008a. Production and Use of Sour Gas from Common Reservoirs for Carbon Black; Definitions

##### Meaning of Words

Sec. 1. Where used in this Act the following words shall have the meaning given to them by Section 2, Chapter 120,<sup>1</sup> Acts Forty-fourth Legislature, Regular Session, to-wit: "Commission", "person", "common reservoir", "gas well", "oil well", "sour gas", "sweet gas", "natural gasoline", "cubic foot of gas", "casinghead gas".

<sup>1</sup> Article 6008.

##### Maximum Daily Withdrawal for Manufacture of Carbon Black; Proration

Sec. 2. In any common reservoir in this State producing both sweet and sour gas, there shall never be produced from such common reservoir for utilization in carbon black manufacture, a maximum daily volume of sour gas from such gas wells in excess of seven hundred fifty million (750,000,000) cubic feet which daily volume of sour gas from gas wells shall be prorated by the Commission among all the sour gas wells in such reservoir so as to prevent cognizable and preventable drainage of gas from tracts of land in such sour gas pro-

ducing area segregated as to surface position and common ownership on which such sour gas wells are located; provided that if the daily demand for sour gas from gas wells for utilization in carbon black manufacture is less than the daily maximum allowable hereinabove permitted, the total daily volume of gas from gas wells from such sour gas area for utilization in carbon black manufacture shall be equal to such daily demand which demand shall be determined by the Commission and shall be prorated among all the sour gas wells in such area as hereinabove provided.

If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by existing law, other than the manufacture of carbon black, such additional demand shall be added to such daily demand for carbon black manufacture as hereinabove set forth, which sum shall constitute the daily volume of sour gas from gas wells which may be withdrawn from such common reservoir for utilization. Such daily volume shall be prorated by the Commission among the sour gas wells in such area on the basis hereinabove set forth.

It shall be unlawful for any person to produce sour gas from any sour gas well in such reservoir in excess of the daily allowable production for such gas well as fixed by the orders and schedules of the Commission. The rate of production from any sour gas well shall be deemed to be the daily average rate of production for the calendar month.

Hearings, Determination; Rules and Regulations of Commission

Sec. 2a. In administering the provisions of this law the Commission shall hold hearings, make determinations, and make and promulgate orders, rules and regulations as provided in Sections 12, 13, and 14 of Chapter 120,<sup>1</sup> Acts of the 44th Legislature, Regular Session. The Commission shall otherwise have the duty to make and promulgate any rule, regulation or order it may find necessary to carry out the provisions of this law, after notice and hearing for such purpose.

<sup>1</sup> Article 6008.

Commingling of Casinghead Gas With Sweet or Sour Gas or of Sweet and Sour Gas, Without Permit, Prohibited; Regulation of Use of Gases; Carbon Black, Use for

Sec. 3. (a) In any common reservoir in this State producing both sweet and sour gas, it shall be unlawful for any person to operate a plant for the extraction of the natural gasoline content of gas in which plant casinghead gas is commingled with either sweet gas or sour gas, or both, or where sweet gas and sour gas are commingled, until such person secures from the Commission a permit authorizing the operation of such plant. It shall be the duty of the Commission to issue such permit when it shall appear that such plant is being operated, and the residue gas from same is and shall be disposed of, in accordance with the provisions of this section.

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(b) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or sour gas, or both, it shall not be lawful for the operator of such plant to blow, or permit to be blown, into the air any of the residue gas remaining after the gasoline content of such gas is extracted; provided, however, the operator of such plant shall be permitted to blow to the air such amount of residue gas from said plant as is determined by the Commission to be necessary in order to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

(c) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or where any such plant commingles sweet gas with sour gas, it shall be the duty of the Commission to ascertain the quantity of residue gas which is required to be used for fuel purposes in the efficient operation of the plant and also the quantity of residue gas which is required to be returned by the operator of such plant to the leases to which the plant is connected for use as fuel in the operation of such leases. The operator of such plant shall be required to utilize or cause to be utilized for one or more of the uses provided for sweet gas by existing law a quantity of the residue gas from such plant which is equal to the quantity of sweet gas which is taken into said plant for processing, less the extraction loss from such processing, but such operator shall not be credited with use of such residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of such residue gas found by the Commission to be necessary for the efficient operation of such plant and return to such leases for fuel for lease operations.

(d) The commingling in any such plant of casinghead gas with sweet gas or sour gas, or both, or of sweet gas with sour gas, except upon the conditions and requirements set forth in Section 3 of this Act, is hereby declared to be unlawful. Whenever it shall be made to appear to the Commission that any such plant is operating in violation of any of the provisions of this section, it shall be the duty of the Commission to cancel the permit so issued to such plant, and it shall thereafter be unlawful for the operator of such plant to commingle either casinghead gas with sweet gas or sour gas or to commingle sweet gas and sour gas in any such plant for the purpose of extracting the natural gasoline content thereof.

(e) Gas from any gas well completed on or before the effective date of this Act within a common reservoir producing both sweet and sour gas from which the gas has not been sold off the leased premises to an interstate pipeline company during the year immediately preceding the effective date of this Act, or gas from any gas well completed after the effective date of this Act within a common reservoir producing both sweet and sour gas, may be

used for the manufacture of carbon black, without the prior extraction of its natural gasoline content provided: (1) it is utilized in a plant producing an average recovery of not less than one and one-half (1½) pounds of carbon black to each one thousand (1,000) cubic feet of such gas; and (2) that the royalty rate and price paid for such gas at the wellhead at least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes. In arriving at such market price in the case of sour gas a reduction of not to exceed one-half (½) cent per thousand cubic feet shall be allowed for purifying such gas to render it suitable for light and fuel purposes. If such gas be used by a producer any royalty rate paid shall be paid on the same basis.

(f) It shall be the duty of the Railroad Commission, after due notice of hearing, to hold and conduct such annual or semi-annual hearings as they may deem necessary for the purpose of determining the market price that is being paid at the wellhead for gas being used and sold for light and fuel purposes. After such hearing and determination of such market price, the Railroad Commission shall thereafter post and publish such price in its main office in Austin, Texas, and its branch office, if any, in the area affected. Thereafter, all parties contracting for gas under the provisions of this Act shall be permitted to accept such posted and published price as the market price to be paid for such gas under the terms hereof.

(g) Sweet gas produced from any gas well in this state may be utilized without the prior extraction of its gasoline content for the manufacture of carbon black where it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black for each one thousand (1,000) cubic feet of gas.

(h) Any natural gas, including casinghead gas, produced from any gas well or oil well in this State, containing less than one and one-half (1½) gallons of propane and heavier hydrocarbons per one thousand (1,000) cubic feet, as determined by fractional analysis made of such gas, may be used for the manufacture of carbon black in a plant producing an average recovery of as much as one and one-half (1½) pounds of carbon black for each one thousand (1,000) cubic feet of gas consumed, but natural gas, including casinghead gas, produced from any gas well or oil well in this State, containing one and one-half (1½) gallons or more of propane and heavier hydrocarbons per one thousand (1,000) cubic feet, as determined by fractional analysis made of such gas, may not be so used in such a plant without the prior extraction of its natural gasoline content; provided, however, that the Railroad Commission of Texas may upon application being filed therefor, and after notice and hearing, authorize the use of any natural gas, including casinghead gas, containing one and one-half (1½) gallons or more of propane and heavier hydrocarbons per one thousand (1,000)

cubic feet, as determined by fractional analysis made of such gas, in the manufacture of carbon black in such a plant where the Railroad Commission shall find it to be unprofitable to first extract the natural gasoline content of such gas. Provided, further, that in the event a general shortage of propane and/or heavier liquid hydrocarbons occurs, then after notice and hearing the Railroad Commission may require additional extraction of such hydrocarbons from such gas to alleviate such shortage, but such additional extraction shall not be required where it is not economically feasible to do so.

(i) The provisions of this Act shall not apply to natural gas produced from a common reservoir containing both sweet and sour gas which was being lawfully used for the manufacture of carbon black, or to gas from gas wells located in such reservoirs which was entitled to be so used at the time of the passage of this Act under the provisions of Section 3, Article 6008a, Title 102, Vernon's Revised Civil Statutes of Texas, being Senate Bill No. 407, Acts of the Forty-fifth Legislature, 1937, as amended by Senate Bill No. 227, Chapter 351, Acts of the Fiftieth Legislature, 1947.

**Hearings by Commission; Notice; Inspection of Books and Records; Sworn Reports**

Sec. 4. From time to time the Commission shall hold hearings, after notice to interested operators, for the purpose of hearing evidence, and to promulgate rules, regulations and orders to enforce the provisions of this law. In addition to the authority given by existing law, the Commission or its agents shall have the right to inspect the books and records of any person who is affected by the provisions hereof and to require sworn reports to be filed, such sworn reports to be filed from time to time as the Commission may find necessary. All rules, regulations and orders promulgated by the Commission under the terms of this law shall be deemed prima facie valid.

**Penalty; Injunction and Prohibition**

Sec. 5. Any person violating any of the provisions of this Act shall be liable to a penalty not to exceed One Thousand (\$1,000.00) Dollars for each offense and each day's violation shall constitute a separate offense. Such penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the Attorney General in Travis County or in the county where the violation occurred. Any and all violations, and threatened violations, of this Act may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought, and in such cases the court shall issue such writs or injunction, prohibitory or mandatory, as the facts justify.

**Appeals to Courts**

Sec. 6. Any person affected thereby may sue to test the validity of any rule, regulation or order promulgated by the Commission under this Act in the same manner, upon the same conditions, and to the same court or courts, as

prescribed for suits testing the validity of rules, regulations and orders of the Commission promulgated under the general oil conservation statutes of this State.

**Repeal of Conflicting Laws; Provisions Cumulative**

Sec. 7. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed; but where same are not in conflict the provisions of this Act shall be cumulative of existing laws.

**Partial Invalidity**

Sec. 8. If any clause, sentence, provision or section of this Act should for any reason be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Act and such remaining parts shall remain in full force and effect.

[Acts 1937, 45th Leg., p. 746, ch. 367; Acts 1947, 50th Leg., p. 695, ch. 351, § 1; Acts 1949, 51st Leg., p. 900, ch. 482, § 1.]

**Art. 6008a-1. Channel Type Carbon Black Plants; Location; Emission of Smoke**

After the effective date of this Act<sup>1</sup> no channel type carbon black plant shall be erected or constructed closer than five (5) miles to the limits of any city, town or village, incorporated at or before the time the erection or construction of such a plant is begun, or to a commercially operated citrus fruit orchard planted not less than one (1) year before the time the erection or construction of such a plant is commenced, unless adequate precaution is taken to minimize the emission of smoke from such plant.

[Acts 1949, 51st Leg., p. 900, ch. 482, § 2.]

<sup>1</sup> This article and art. 6008a, § 3(h), (i), effective 90 days after July 6, 1949, date of adjournment.

**Art. 6008b. Agreements for Pooled Units and Cooperative Facilities in Secondary Recovery Operations**

**Agreements Authorized; Approval; Permissible and Prohibited Provisions**

Sec. 1. Subject to approval of the Railroad Commission of Texas (hereinafter called Commission), as hereinafter set out, persons owning or controlling production, leases, royalties, or other interests in separate properties in the same oil field, gas field, or oil and gas field, may voluntarily enter into and perform agreements for the following purposes:

(A) To establish pooled units necessary to effect secondary recovery operations for oil or gas, including those known as cycling, recycling, repressuring, water flooding, and pressure maintenance and to establish and operate cooperative facilities necessary for said secondary recovery operations;

(B) To establish pooled units and cooperative facilities necessary for the conservation and utilization of gas, including those for extracting and separating the hydrocarbons from the natural gas or casinghead gas and returning the dry gas to a

formation underlying any lands or leases committed to the agreement.

Such agreements shall not become lawful nor effective until the Commission finds, after application, notice and hearing:

1. Such agreement is necessary to accomplish the purposes specified in (A) or (B) or both; that it is in the interest of the public welfare as being reasonably necessary to prevent waste, and to promote the conservation of oil or gas or both; and that the rights of the owners of all the interests in the field, whether signers of the unit agreement or not, would be protected under its operation;

2. The estimated additional cost, if any, of conducting such operation will not exceed the value of additional oil and gas so recovered, by or on behalf of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, lien claimants and others as well as the lessees;

3. Other available or existing methods or facilities for secondary recovery operations and/or for the conservation and utilization of gas in the particular area or field concerned are inadequate for such purposes;

4. The area covered by the unit agreement contains only such part of the field as has reasonably been defined by development, and that the owners of interests in the oil and gas under each tract of land within the area reasonably defined by development are given an opportunity to enter into such unit upon the same yardstick basis as the owners of interests in the oil and gas under the other tracts in the unit.

Such agreements may provide for the location and spacing of input wells and for the extension of leases covering any part of lands committed to the unit so long as operations for drilling or reworking are conducted on the unit or so long as production of oil or gas in paying quantities is had from any part of the lands or leases committed thereto; provided that no such agreement shall relieve any operator from the obligation to develop reasonably the lands and leases as a whole committed thereto.

Such agreements shall not bind any land owner, royalty owner, lessor, lessee, overriding royalty owner or any other person who does not execute them, but shall bind only the persons who execute them, their heirs, successors, assigns and legal representatives; but no person shall be compelled or required to enter into such an agreement.

It shall be grounds for the disapproval of the agreement, if the Commission finds that the area described in the unit agreement is insufficient, or that it covers more acreage than is necessary, to accomplish the purposes of this Act.

All agreements executed hereunder shall be subject to any valid order, rule, or regulation

of the Commission relating to location, spacing, proration, conservation, or other matters within the authority of the Commission, whether promulgated prior to or subsequent to the execution of such agreement, and no such agreements shall attempt to contain the Field Rules for the area or field, that being solely the province of the Commission; and no such agreement shall provide for nor limit the amount of production of oil or gas from the unit properties, that being the province of the Commission.

No such agreement shall provide, directly or indirectly, for the cooperative refining of crude petroleum, distillate, condensate, or gas, or any by-product of crude petroleum, distillate, condensate or gas. The extraction of liquid hydrocarbons from gas, and the separation of such liquid hydrocarbons into propanes, butanes, ethanes, distillate, condensate, and natural gasoline, without any additional processing of any of them, shall not be considered to be refining.

No such agreement shall provide for the cooperative marketing of crude petroleum, condensate, distillate or gas, or any by-products thereof.

No provisions of this Act shall be construed as requiring the approval of the Commission of voluntary agreements for the joint development and operation of jointly owned properties.

Nothing herein shall restrict any of the rights which persons now may have to make and enter into unitization and pooling agreements.

The approval of any such agreement shall not of itself be construed as a finding that operations of a different kind or character in the portion of the field outside of the unit are wasteful or not in the interest of conservation.

#### Public Lands

Sec. 2. The Commissioner of the General Land Office, on behalf of the State of Texas or of any fund belonging thereto, is authorized to execute contracts committing to the agreements herein declared to be lawful the royalty interests in oil or gas, or both, reserved to the State or any fund thereof by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency or authority of the State; provided (a) that agreements which commit such royalty interests in lands set apart by the Constitution and laws of this State for the Permanent Free School Fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tide-water limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, are approved by the School Land Board and are executed by the owners of the soil if they cover lands leased for oil and gas under the Relinquishment Acts, Articles 5367 to 5379, inclusive, Revised Civil Statutes of Texas, 1925; and (b) that agreements which commit such royalty interests in lands or areas other than

those mentioned in the preceding clause (a) of this Section 2, are approved by the board, official, agent, agency, or authority of the State vested with authority to lease or to approve the leasing of said lands or areas for oil and gas.

An agreement authorized by this Act may provide that the dry gas after extraction of hydrocarbons may be returned to a formation underlying any lands or leases committed to the agreement, and may provide that no royalties are required to be paid on such gas so returned.

Sec. 3. Repealed by Acts 1955, 54th Leg., p. 88, ch. 55, § 434, eff. Jan. 1, 1956.

#### Repeals

Sec. 4. Section 21 of Chapter 120 of the Acts of the 44th Legislature, Regular Session, page 318,<sup>1</sup> and Chapter 309 of the Acts of the 49th Legislature, Regular Session, page 507,<sup>2</sup> and Chapter 80 of the Acts of the 49th Legislature, Regular Session, page 117,<sup>3</sup> are hereby repealed. All other laws and parts of laws in conflict herewith, to the extent only that they may be in conflict, are hereby repealed; but where the same are not in conflict, the provisions of this Act shall be cumulative of such other existing law; provided, however, that nothing in this Act contained shall repeal, modify or impair any of the provisions of House Bill No. 782, as heretofore amended, passed by Regular Session of 44th Legislature, relating to oil and gas conservation, nor shall impair the power of the Commission proceeding under the oil or gas conservation laws of this State, to prevent waste, except as provided in Section 5 of this Act.

<sup>1</sup> Article 6008, § 21.

<sup>2</sup> Article 5368b.

<sup>3</sup> Article 4192a.

#### Conflict With Anti-Trust Laws

Sec. 5. Agreements, and operations thereunder, in accordance with this Act, being necessary to prevent waste and conserve the natural resources of this State, shall not be construed to be in violation of the provisions of Title 126, Revised Civil Statutes, 1925, as amended, nor Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, known as Anti-Trust Acts. However, if any court should find a conflict between this Act and Title 126, Revised Civil Statutes of Texas, 1925, as amended, or Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, then this Act is intended as a reasonable exception thereto, necessary for the above stated public interests; provided further, that if any court should find that a conflict exists between this and the above mentioned laws, and that this Act is not a reasonable exception thereto, then it is the intent of the Legislature that this Act, or any conflicting portion hereof, shall be declared invalid rather than declaring the above mentioned Anti-Trust Laws, or any portion thereof, invalid.

#### Severability

Sec. 6. It is hereby declared to be the legislative intent to enact each provision of this Act

separately; and should any section, phrase, or part of this Act be declared unconstitutional, or for any reason invalid, such invalidity shall not affect any other remaining portion, provision, or section.

[Acts 1949, 51st Leg., p. 477, ch. 259; Acts 1955, 54th Leg., p. 88, ch. 55, § 434, eff. Jan. 1, 1956.]

#### Art. 6008c. Mineral Interest Pooling Act

Sec. 1. This Act may be cited and referred to as the Mineral Interest Pooling Act. The term "mineral" as used herein is limited to oil and gas.

Sec. 2. (a) When two or more separately owned tracts of land are embraced within a common reservoir of oil or gas for which the Railroad Commission of Texas (hereinafter called "Commission") has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir, and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, or to prevent waste, shall, on the application to the Commission of the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit, the owner of any working interest or any owner of an unleased tract other than a royalty owner, establish a unit and pool all of the interests therein within an area containing the approximate acreage of such proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10% tolerance. The applicant shall set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit, and the Commission shall dismiss such application if it finds that a fair and reasonable offer to voluntarily pool has not been made by the applicant. An offer by any owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer. The Commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others, unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily, in which event the Commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for such unit if it exceeds the size of the standard proration unit for the reservoir. The Commission shall only

pool such acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir.

(b) A pooling agreement, offer to pool, or pooling order shall not be considered fair and reasonable if it provides for an operating agreement containing any of the following provisions:

- (1) Preferential right of the operator to purchase mineral interests in the unit;
- (2) A call on or option to purchase production from the unit;
- (3) Operating charges which include any part of district or central office expense other than reasonable overhead charges;
- (4) Prohibition against non-operators questioning the operation of the unit.

(c) Upon the filing of an application for the pooling of interests into a unit under this Act, at least 30 days notice shall be given to all interested parties, including notice by publication if there are unknown owners or owners whose whereabouts are unknown, in the manner and form prescribed by the Commission before hearing on such application, notwithstanding Article 6036a, Vernon's Civil Statutes of Texas.

(d) All orders effecting such pooling shall be made after notice, as provided above, and hearing; and shall be upon such terms and conditions as are fair and reasonable, and will afford to the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share. Each order shall describe the lands included in the unit, identifying the reservoir to which it applies, shall designate the location of the well, and appoint an operator for the unit. All operations upon, and production from, any portion of a unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon and production from, each separately-owned tract in the pooled unit, and if any gas well on a pooled unit is shut in, it shall be deemed that the shut-in gas well is on each separately-owned tract in the pooled unit. If only part of a tract is included in the unit, operations upon, production from, or a shut-in gas well on, the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease thereon would be maintained had the unit been created voluntarily under the provisions of the lease. For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit, unless the Commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, in which event the Commission shall so allocate the production that each tract will receive its fair share,

which as to any non-consenting owner shall in no event be less than he would receive under a surface-acreage allocation. The pooling order of the Commission shall, as to each owner who elects not to pay his proportionate share of the drilling and completion costs in advance, make provision for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completing and operating costs plus a charge for risk not to exceed 100% of such drilling and completing costs. If there is any dispute relative to such costs, the Commission shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing thereon.

(e) A unit established by order of the Commission under authority of this Act may not subsequently be modified or dissolved without the consent of all mineral owners affected, except as may be necessary to permit its enlargement as provided in Section 2(a) above; provided however, such unit shall be automatically dissolved one year after its effective date if no production or drilling operations have been had thereon, or six months after the completion of a dry hole thereon or cessation of production therefrom. Upon termination of any lease pooled by order of the Commission under authority of this Act, interests covered thereby shall be deemed pooled as unleased mineral interests.

(f) This Act shall not apply to any reservoir discovered and produced prior to March 8, 1961.

(g) Any person or party at interest aggrieved by an order of the Commission effecting pooling under this Act may appeal such order within 30 days to the District Court of the county in which the land or any part thereof covered by such order is located, and not elsewhere, notwithstanding the provisions of Section 8 of Article 6049c, Vernon's Civil Statutes of Texas.

(h) This Act shall not apply to any lands owned by the State of Texas, nor to lands in which the State of Texas has an interest directly or indirectly, nor shall this Act amend, repeal, change, alter or affect in any manner the authority or jurisdiction of the Commissioner of the General Land Office or the State of Texas with respect to any lands or interest in lands in which the Commissioner of the General Land Office has jurisdiction, nor shall this Act amend, repeal, change, alter or affect in any manner the authority, jurisdiction or consent of the Commissioner of the General Land Office of the State of Texas on the pooling of any interest now subject to the jurisdiction, authority or consent of the Commissioner of the General Land Office of the State of Texas; provided, however, that with the approval or consent first had and obtained, or at the instance of the Commissioner of the General Land Office of the State of Texas, or any board or agency having jurisdiction thereof,

the lands in which the State of Texas has such interest as described in this Section may be pooled under this Act.

[Acts 1965, 59th Leg., p. 24, ch. 11, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 2793, ch. 903, § 1, eff. June 15, 1971.]

**Art. 6009. Repealed by Acts 1934, 44th Leg., p. 180, ch. 76, § 17**

**Art. 6010. Water in Wells**

If any person or persons in this State, in boring any well or wells, for oil or gas, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water cannot be cased off, immediately abandon all work upon such well and plug and fill the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered.

[Acts 1925, S.B. 84.]

**Art. 6011. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Art. 6012. May Plug or Shut In**

If the owner of any such well shall neglect or refuse to cause said well to be plugged, or shut in, as herein provided, for a period of twenty days after a written notice to do so, which notice may be served personally upon such owner, or may be posted at a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof. The reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable.

[Acts 1925, S.B. 84.]

**Art. 6013. Petition to Restrain Waste**

In addition to the penalties provided in this title, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in the violation of this law, and to issue such mandatory or restraining orders as may in his judgment be necessary. Such petition may be filed by any citizen of this State, and the same need allege no further financial interest than the peti-

tioner possesses in common with all citizens of the State in the natural resources thereof.  
[Acts 1925, S.B. 84.]

#### Art. 6014. "Waste"

The production, storage or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(a) The operation of any oil well or wells with an inefficient gas-oil ratio, and the Commission is hereby given authority to fix and determine by order such ratio; provided that the utilization for manufacture of natural gasoline of gas produced from an oil well within the permitted gas-oil ratio shall not be included within the definition of waste.

(b) The drowning with water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities.

(c) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(d) Permitting any natural gas well to burn wastefully.

(e) The creation of unnecessary -fire hazards.

(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating, spacing or operating well or wells as to reduce or tend to reduce the total ultimate recovery of crude petroleum oil or natural gas from any pool.

(g) Waste or loss incident to, or resulting from, the unnecessary, inefficient, excessive or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this Act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership.

(h) Surface waste or surface loss, including the storage either permanent or temporary of crude petroleum oil, or the placing any product thereof, in open pits or earthen storage, and all other forms of surface waste or surface loss, including unnecessary or excessive surface losses, or destruction without beneficial use, either of crude petroleum oil or of natural gas.

(i) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(j) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand.

The Commission may determine when such excess production exists or is imminent and ascertain the reasonable market demand.

The Commission may consider any or all of the above definitions, whenever the facts, circumstances or conditions make them applicable, in making rules, regulations or orders to prevent waste of oil or gas.

Nothing in this Section shall be construed to authorize limitation of production of marginal wells, as such marginal wells are defined by Statute, below the amount fixed by Statute for such wells.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 694, ch. 313; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 1; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 1; Acts 1935, 44th Leg., p. 180, ch. 76, § 2.]

#### Art. 6014a. Railroad Commission Without Power to Declare any Process of Refining Oil as Waste

The Commission shall have no authority to make any rule, regulation or order, or in any wise determine or hold that any mode, manner or process of refining crude petroleum oil constitutes waste.

Nothing in this Act shall be construed as granting to the Commission any power or authority to restrict, or in any manner limit the drilling of wells for the purpose of exploring for crude petroleum oil or natural gas or both in territory not known to produce either such oil or gas.

The Commission shall not, under the terms of Subdivision (j) of Section 2<sup>1</sup> hereof, restrict the production of crude petroleum oil from any new field brought into production by such exploration until the total production therefrom aggregates ten thousand (10,000) barrels of crude petroleum oil per day, provided, however, the Commission's power to restrict the production from such new field under the remaining subdivisions of said Section 2 shall not be affected or limited by this paragraph.

[Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 2; Acts 1935, 44th Leg., p. 180, ch. 76, § 3.]

<sup>1</sup> Article 6014.

#### Art. 6015. Prevention of Waste

All operators, contractors, or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas or both, in drilling and producing operations, storage or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes.

[Acts 1925, S.B. 84.]

#### Art. 6016. Confining Gas in Wells

Whenever natural gas in such quantities, in a gas bearing stratum known to contain natu-

ral gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters.

[Acts 1925, S.B. 84.]

**Art. 6017. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Art. 6018. Pipe Line Carriers**

Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

1. Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

[Acts 1925, S.B. 84.]

**Art. 6019. Control Of**

It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the purview of this law, and subject to the jurisdiction herein conferred upon the Railroad Commission.

[Acts 1925, S.B. 84.]

**Art. 6020. Powers of Carrier**

The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all said common carrier pipe lines. Any person, firm, limited partnership, joint stock association, or corporation may acquire such right by filing with said Commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

[Acts 1925, S.B. 84.]

**Art. 6020a. Telephone, Telegraph, Electric Transmission and Power Lines; Oil, Gas and Sulphur Pipelines; Irrigation Canals and Water Pipelines; Easements and Rights-of-Way Over Public Lands and Waters**

**Grants of Right-of-Way**

Sec. 1. The Commissioner of the General Land Office may execute grants of all easements for right-of-ways for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatsoever nature, and for irrigation canals, laterals, and water pipelines granted by this State, across all unsold Public Free School Land, and across all islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, and across that portion of the Gulf of Mexico within the jurisdiction of Texas. The Board of Regents of the University of Texas may continue to execute, under authority heretofore granted, all right-of-way easements for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatever nature, and for irrigation canals, laterals, and water pipelines across lands belonging to the State, and dedicated to the support and maintenance of the University of Texas. The Board of Regents of the University of Texas may continue to execute, under authority heretofore granted, easements or leases for the

erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on University Lands, and the Commissioner of the General Land Office may execute easements or leases for electric substations, for pumping stations, loading racks, and tank farms to be located on State Lands other than those owned by the University.

#### Approval of Forms; Recording and Fees

Sec. 2. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General and shall be recorded in the office of the county clerk of the county in which the land lies. The recording fee shall be paid by the persons, firm, or corporation obtaining the easement or right-of-way who shall furnish a certificate of such recording to the Commissioner of the General Land Office.

#### Term of Easement

Sec. 3. No right-of-way easement, electric substation, or tank farm, loading rack, or pumping station easement or lease of the character enumerated in Section 1 hereof may be granted for a longer term than ten (10) years, but any such easement may be renewed by the official or officials charged with the execution thereof, in his or their discretion.

#### Privilege Fee for Right-of-Way

Sec. 4. From and after the passage of this Act every person or corporation occupying or using any unsold Public Free School Land, any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of Texas, and any unsold public land dedicated to the University of Texas, or any part thereof, as a telephone, telegraph, electric transmission and/or power line right-of-way, as an oil and/or gas pipeline right-of-way, or sulphur pipeline right-of-way, or irrigation canal, lateral, and water pipeline right-of-way, shall, as a condition to such further use or occupancy, pay annually in advance for such privileges, to the Commissioner of the General Land Office at the General Land Office in Austin, Texas a sum equal to two and one-half cents ( $2\frac{1}{2}\phi$ ) per lineal rod per annum for each and every rod of telephone, telegraph, electric transmission and power line, oil pipeline and/or gas pipeline used, possessed, or maintained by any such person or corporation on any unsold Public Free School Land, on any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, on any portion of the Gulf of Mexico within the jurisdiction of Texas, and on any public land dedicated to the University of Texas. This annual privilege fee shall be paid by all such persons and corporations on all oil pipelines, gas pipelines, telephone, telegraph, electric transmission and/or power lines now existing and situated on public lands of the classes above mentioned which have not heretofore paid such fee. All amounts due shall be paid annually unless the easement granted provides otherwise.

#### Terms of Easements Fixed by Land Commissioner and Board of Regents of University

Sec. 5. Hereafter all telephone, telegraph, electric transmission, power lines, and/or all pipeline right-of-way easements and easements or right-of-ways for irrigation canals, laterals, and water pipelines shall be executed on terms to be fixed by the Land Commissioner and by the Board of Regents of the University of Texas, respectively, but no oil and/or gas pipeline right-of-way easement, or sulphur pipeline right-of-way easement, telephone, telegraph, electric transmission and/or power line right-of-way easement shall be granted which does not provide for an annual privilege fee of not less than two and one-half cents ( $2\frac{1}{2}\phi$ ) per lineal rod per annum of oil and/or gas pipeline for which a right-of-way is sought. A higher fee may be fixed by contract between the officials named and any grantee of such easement.

#### Rentals for Pumping Stations, Etc.

Sec. 6. The rental to be charged for an easement or lease for electric substation sites, pumping stations, loading racks, and tank farms shall be such as shall be agreed upon between the lessee and the Board of regents with respect to University lands, and the Commissioner of the General Land Office with respect to other State Lands.

#### Disposition of Funds

Sec. 7. All income received by the Land Commissioner under this Act from Public School Land shall be credited to the Available School Fund; all income received by the Land Commissioner under this Act from University Lands shall be credited to the Available University Fund, and all income received by the Land Commissioner under this Act from the other lands herein set out shall be credited to the General Revenue Fund.

#### Interest on Past Due Payments

Sec. 8. All past due payments under this Act shall bear interest at the rate of ten per centum (10%) per annum. In event the date of payment is not fixed by contract, or in event no written contract has been executed, all unpaid annual fees due shall bear interest at the rate of ten per centum (10%) calculated from the first day of January following the year for which such annual privilege fee was due.

#### Penalty for Violations

Sec. 9. No person or corporation shall hereafter construct any telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipe line of the kind and character enumerated in Section 1 hereof across or on any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, nor shall any person or corporation owning or possessing any telephone, telegraph, transmission, and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipeline of

the kind and character enumerated in Section 1 hereof now lying and situated on or across any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, who has not obtained a proper easement as herein provided for, continue in possession of any such lands without obtaining from the Commissioner of the General Land Office, or the Board of Regents of the University of Texas, respectively, a grant of a right-of-way easement or other easement across or on such lands where such telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, or pumping station, irrigation canal, lateral, and water pipeline is to be constructed. Any person or corporation violating this section of this Act shall be liable for a penalty of One Hundred Dollars (\$100) per day for each day of such violation, said penalty to be recovered by the Attorney General.

#### Venue of Suits

Sec. 10. The venue of all suits by the State arising out of this Act, or for violation of any provision of this Act, is hereby fixed in Travis County.

[Acts 1933, 43rd Leg., p. 168, ch. 77; Acts 1943, 48th Leg., p. 275, ch. 147, § 1; Acts 1955, 54th Leg., p. 479, ch. 134, § 1.]

#### Art. 6020b. Pipe Lines for Loading Water-Craft in Gulf

Sec. 1. That from and after the passage of this Act, it shall be unlawful for any person, firm, corporation, trust or association of persons to build, construct, extend, operate or maintain any pipe lines leading into the waters of the Gulf of Mexico, which pipe line is used or designed to be used for transporting, handling, loading, unloading, or discharging oil, gas, or any derivative of oil or gas, or any product or commodity susceptible of transportation by pipe line, into tanks, ships, vessels, barges, water-craft, or any agency for loading watercraft, provided, however, that the terms of this Act do not include any inlet, inland water bays, or arm of the Gulf of Mexico, lying between any of the islands and mainlands of the coast of Texas, or on the inside of any pass connecting the waters of the Gulf of Mexico with any bay, inlet, inland waters or arm of the Gulf of Mexico, or connecting any of the bays, inlets or arms with each other, nor shall the terms of this Act apply to the waters of any harbor or port lying within the territorial jurisdiction of the State of Texas; provided that pipe lines, as described in this Section, may be extended into the Gulf of Mexico for loading any of the oil or products as described in this Section into tanks, ships, vessels, water-craft or any agency for loading water-craft whenever an emergency arises, by the destruction, through a storm, of the loading facilities within any harbor. This emergency can only be construed to exist in the event of a storm and after a determination by the Railroad Commission, and shall continue for only three

months after the construction of such pipe lines.

Sec. 2. That any person, firm, corporation, trust or association or <sup>1</sup> persons violating the terms of this Act shall be guilty of a misdemeanor, and upon conviction thereof, be fined in the amount of one thousand (\$1,000.00) Dollars for each day that such person, firm, corporation, trust or association of persons shall violate or be engaged in violating the terms of this Act, and each day's commission of the act or acts prohibited by the terms of this Law, shall be and constitute a separate offense.

Sec. 3. That it shall be the duty of the Attorney General of the State of Texas to institute timely legal proceedings by injunction or otherwise against any person, firm, corporation, trust or association of persons violating the terms of this Act for the purpose of restraining the commission or continuance of such prohibited act or acts, and the Attorney General of Texas shall institute such proceedings immediately his attention is called to any violation of this Act, provided that jurisdiction and venue of all proceedings instituted by the Attorney General under this Law shall lie in the District Court of Travis County, Texas, and that this provision as to jurisdiction and venue shall be superior to any other law relating to jurisdiction and venue.

[Acts 1920, 41st Leg., p. 487, ch. 230.]

<sup>1</sup> So in enrolled bill. Should probably read "of."

#### Art. 6021. Injury to Roads, etc.

The right to run pipe lines, telegraph and telephone lines along, across or over any public road or highway can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof.

[Acts 1925, S.B. 84.]

#### Art. 6022. Eminent Domain

Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or op-

eration of his, its or their common carrier pipe line; and shall have the right to lay his, its or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than fifteen feet from the improved section thereof except with the approval and under the direction of the commissioners court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1497, subject to the conditions, limitations and restrictions therein stated.

[Acts 1925, S.B. 84.]

#### Art. 6023. Jurisdiction

Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations and corporations and their operations, and the Attorney General shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "Commission," as used in this title, shall mean the Railroad Commission of Texas. The word "Commissioner" shall mean any member of the Railroad Commission.

[Acts 1925, S.B. 84.]

#### Art. 6024. Powers

In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the Commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

[Acts 1925, S.B. 84.]

#### Art. 6025. Attendance of Witnesses

If any witness fails or refuses to obey a subpoena from the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness as in civil cas-

es, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpoena.

[Acts 1925, S.B. 84.]

#### Art. 6026. Criminating Testimony

If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpoena, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

[Acts 1925, S.B. 84.]

#### Art. 6027. Witness Fees

Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three dollars per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to by such witness and approved by the Commission or chairman thereof, provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

[Acts 1925, S.B. 84.]

#### Art. 6028. Officer's Fees

The sheriff or constable executing any process issued by the Commission or any Commissioner thereof under the provisions of this title shall receive such compensation as the Commission may allow.

[Acts 1925, S.B. 84.]

#### Art. 6029. Rules and Regulations

The Commission shall make and enforce rules, regulations or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations or orders for the following purposes:

- (1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and

natural gas in drilling and producing operations and in the storage, piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine crude petroleum oil, natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent crude petroleum oil and natural gas and water from escaping from the strata in which they are found into other strata.

(6) To establish rules and regulations for shooting wells and for separating crude petroleum oil from natural gas.

(7) To require records to be kept and reports made.

(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations or orders as may be necessary to that end.

(9) To provide for the issuance of permits, tenders, and other evidences of permission when the issuance of such permits, tenders, or permission is necessary or incident to the enforcement of its rules, regulations, or orders for the prevention of waste.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 15; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 7; Acts 1935, 44th Leg., p. 180, ch. 76, § 4.]

#### Art. 6029a. Rules and Regulations; Drilling Exploratory Wells and Wells; Abandoning Wells; Pollution Prevention

The Railroad Commission shall also make and enforce rules, regulations and orders in connection with the drilling of exploratory wells and wells for oil or gas or any purpose in connection therewith; the production of oil or gas; and the operation, abandonment and proper plugging of such wells to prevent the pollution of the streams and public bodies of surface water of the State, and any sub-surface water strata that are capable of producing water suitable for domestic or livestock use, or for irrigation of crops or for industrial use, which would or might result from the escape or release of crude petroleum oil, salt water or other mineralized waters from any such well, or from operations in connection therewith.

In all cases where an application to drill a new well, or to redrill or deepen an old well, is made to the Railroad Commission of Texas, and in all cases where an application is filed with the Railroad Commission of Texas to authorize the connection of any producing well or wells

to a pipe line or other outlet by any operator who has acquired said producing well or wells, and in all cases where a well potential form is filed by any operator who has reworked and brought into production any previously non-producing well and thereby makes application for an allowable for production of oil and/or gas therefrom, the Railroad Commission, prior to approving any such application, may require the applicant or applicants to execute and file with the Railroad Commission a bond in the penal sum of Five Thousand Dollars (\$5,000) for any such well to be so drilled or operated, or in lieu of a separate bond for each such well, a blanket bond in the penal sum of Ten Thousand Dollars (\$10,000) to cover all wells drilled, to be drilled, and/or operated in the State of Texas, conditioned that the operator will plug and abandon said well in accordance with the laws of the State of Texas and the rules, regulations, and orders of the Railroad Commission. Each of such bonds shall be executed by a corporate surety authorized to do business in Texas, and shall be renewed and be continued in effect until the aforesaid conditions have been complied with or release of same is authorized by the Railroad Commission. The discretion of the Railroad Commission in requiring a bond hereunder shall be final and not subject to appeal. In the event that any well covered by any such bond is transferred, sold, or assigned by its operator, a new bond covering said well or wells may be required by the Railroad Commission of the party acquiring same, and the bond of the prior operator shall remain in effect until the new bond is so provided or the filing of same is waived.

The Railroad Commission is hereby authorized and directed to employ such additional personnel as may be necessary to the administration and enforcement of this Act and related laws and orders, rules and regulations adopted by the Commission.

[Acts 1955, 54th Leg., p. 1097, ch. 406, § 1.]

#### Art. 6029b. Repealed by Acts 1971, 62nd Leg., p. 658, ch. 58, § 2, eff. Aug. 30, 1971

Acts 1971, 62nd Leg., p. 110, ch. 58, repealing this Article, enacts the Texas Water Code.

This article encompassed the "Salt Water Haulers Permit Act", and was derived from Acts 1967, 60th Leg., p. 844, ch. 355. See, now, Water Code, §§ 24.001 et seq.

#### Art. 6030. Supervisor and Employees

The Commission shall employ a Chief Supervisor of its Oil and Gas Division to aid the Commission in the enforcement of the provision of this Act and all Oil or Gas Conservation Laws of Texas, and all rules, regulations and orders of said Commission made thereunder. He shall also perform the duties placed upon the pipe line expert as set out in the pipe line statutes of this State. The Commission may also appoint a Chief Deputy Supervisor and such other Deputy Supervisors as may be necessary to assist in carrying out the provisions of this Act and related Statutes and shall employ such other assistants and clerical help as may be necessary for the same purpose.

The salary of the Chief Supervisor and of Chief Deputy Supervisor and of the Deputy Supervisors shall be fixed by the Legislature in its appropriation bill for the Railroad Commission; provided such salaries shall not exceed the following amounts: That of the Chief Supervisor shall be Six Thousand (\$6,000.00) Dollars per annum, that of the Chief Deputy Supervisor shall be Five Thousand (\$5,000.00) Dollars per annum, and that of the Deputy Supervisors shall be Thirty-six Hundred (\$3,600.00) Dollars each per annum. In addition to any other qualifications that may be required by the Commission, no one shall hereafter be appointed Chief Supervisor who has not had at least five years experience in some line of the oil or gas business, or in some other business or profession calculated to fit him for the performance of his duties. No one shall hereafter be appointed as Chief Deputy Supervisor who has not had at least three years experience in oil and gas field work, and no one shall hereafter be appointed deputy supervisor who has not had at least two years experience in oil and gas field work, a substantial portion of which shall be in the drilling or production department. All salaries and other expenses of every kind and character necessary in the administration and enforcement of this Act shall be paid out of the funds created in Chapter 30, Acts of 1917, being now Article 6032, Revised Civil Statutes of 1925, and in the manner therein provided. The Chief Supervisor, Chief Deputy Supervisor and all Deputy Supervisors and all other employees shall perform the duties prescribed by the Railroad Commission and in conformity to the rules and regulations of the Commission dealing with the production, transportation and conservation of crude oil and natural gas.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 694, ch. 313, § 3.]

#### Art. 6031. Duties of Supervisor

The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the Commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the Commission in the performance of its duties under this title.

[1925, S.B. 84.]

#### Art. 6032. Tax

There is hereby levied a tax of three-sixteenths ( $\frac{3}{16}$ ) of one cent per barrel of forty-two (42) standard gallons of crude petroleum produced within this State, which shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State Treasury and held in a Special Fund to be known as the Oil and Gas Enforcement Fund,

and shall be paid out in warrants as other funds. The funds derived from this tax shall, so far as hereinafter provided, be used for the administration of the conservation laws of this State relating to oil and gas.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 22; Acts 1933, 43rd Leg., p. 409, ch. 162, § 11; Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 1; Acts 1935, 44th Leg., p. 618, ch. 245, § 1.]

#### Art. 6032a. Collection and Report of Tax

The provisions made in Chapter 162, Acts Regular Session, Forty-third Legislature,<sup>1</sup> providing for the collection of the gross production tax on oil and reports required in connection with the collection of such tax, shall apply to the collection of taxes levied under the provisions of Section 1 of this Act,<sup>2</sup> and if any person, firm or corporation should fail to pay the tax herein provided for, or should fail to make the reports required in such Act or should make erroneous reports as provided in said Act, such person, firm or corporation shall be subject to the fines and penalties as provided in Section 8, Chapter 162, Acts Regular Session of the Forty-third Legislature.<sup>3</sup>

[Acts 1933, 43rd Leg., p. 409, ch. 162, § 11; Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 2; Acts 1935, 44th Leg., p. 618, ch. 245, § 2.]

<sup>1</sup> Arts. 6032, 7047, subd. 23 (repealed), 7057a (repealed), 7105; Penal Code, Art. 1111a (repealed). See, now, Taxation-General, Arts. 1.03, 4.01 to 4.14 and 13.02.

<sup>2</sup> Former art. 7057a. See, now, Taxation-General, Art. 1.03, 4.01 to 4.14.

<sup>3</sup> Penal Code, former art. 1111a. See, now, Taxation-General, Art. 4.01 et seq.

#### Art. 6032b. Salaries and Expenses Paid from Tax

It is hereby expressly declared to be the intent of the Legislature that salaries and other expenses incurred against the funds appropriated to the Oil and Gas Division of the Railroad Commission of Texas by the General Appropriation Act of the Forty-third and Forty-fourth Legislatures, shall, after the effective date of this Act, be paid out of the funds derived from the tax levied by this Article, and none of said appropriations shall ever hereafter be paid out of the General Revenue Fund. In the event that there is an excess derived from the tax over and above the amount of money appropriated to the Oil and Gas Division of the Railroad Commission of Texas, and/or the Attorney General's Department, and/or the Department of Labor Statistics of the State, same shall revert to and be transferred into the General Revenue Fund of the State.

[Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 3; Acts 1935, 44th Leg., p. 618, ch. 245, § 4.]

#### Art. 6032c. Additional Employees for Railroad Commission

The Railroad Commission of Texas is hereby authorized and directed in addition to the number of employees at the salaries and the expenses fixed by the General Appropriation Act of the Regular Session of the Forty-third Legislature for the Oil and Gas Division of said Commission to expend such sums to employ

such gaugers, inspectors, investigators, supervisors and clerical help, including three employees who shall be Chief Engineer, Chief Petroleum Engineer and Administrative Chief, who shall be paid a salary not to exceed Three Thousand Seven Hundred Fifty Dollars (\$3,750) per annum each, and the sum of Twenty-eight Hundred Twelve Dollars and Fifty Cents (\$2812.50), or so much thereof as is necessary, is hereby appropriated to pay such salaries out of the Oil and Gas Enforcement Fund hereinbefore established.

[Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 4; Acts 1935, 44th Leg., p. 618, ch. 245, § 5.]

#### Art. 6032c-1. Limitation on Expenditure From Appropriation

The amounts appropriated herein to pay salaries to the Railroad Commission, the Attorney General's Department and the Department of Labor Statistics shall not exceed the maximum amounts fixed by this Act, and in no event to exceed the maximum amount fixed for the respective or similar positions by the General Appropriation Bills for said respective Departments of the State Government.

[Acts 1935, 44th Leg., p. 618, ch. 245, § 8.]

#### Art. 6032c-2. Repealed by Acts 1965, 59th Leg., p. 762, ch. 355, § 3, eff. Aug. 30, 1965

See, now, article 6005 and note thereunder.

#### Art. 6032d. Penalty for Misuse of Oil and Gas Enforcement Funds

If any person whose salary is paid out of the funds herein provided for, uses his time or a state-owned automobile for campaign purposes, or for the purpose of furthering the candidacy of his employer or any other candidate for State office, he shall be deemed guilty of a misdemeanor and upon conviction be fined not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500) and shall be confined in jail for not less than thirty (30) nor more than ninety (90) days, and shall be discharged at once, and shall be rendered ineligible for future employment by any State Department. And in event any citizen of this State shall file a civil complaint with any District Court in Travis County, Texas, charging any such employee with any such use of his time or state-owned automobile, such court shall set such complaint for hearing on some date not more than twenty (20) or less than ten (10) days after the date of the filing of such complaint, and shall cause notice to be served on such employee for at least five (5) days prior to the date of such hearing, and if, upon such hearing, such court shall determine that such employee has used his time and/or a state-owned automobile as charged in the complaint said court shall certify such fact to the Department employing such person and order his immediate discharge. Any person against whom such charges shall have been filed shall have the right of appeal to the Court of Civil

Appeals, but the pendency of such appeal shall in no wise suspend his discharge.

[Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 5; Acts 1935, 44th Leg., p. 618, ch. 245, § 10.]

#### Art. 6032e. Transfer of Surplus

Any surplus remaining in the Oil and Gas Enforcement Fund at the end of each fiscal year shall be transferred into and become a part of the General Revenue Fund of this State.

[Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 6; Acts 1935, 44th Leg., p. 618, ch. 245, § 11.]

#### Art. 6032f. Partial Invalidity

If any section, subsection, sentence, clause, or phrase of this Act is held, for any reason, to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence and clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

[Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 7; Acts 1935, 44th Leg., p. 618, ch. 245, § 12.]

#### Art. 6033. Certificate of Compliance

Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Commission a certificate showing compliance with the oil or gas conservation laws of the State and conservation rules, regulations and orders of the Commission. No operator of a pipe line or other carrier shall connect with any oil or gas well until the owner or operator of such well shall furnish a certificate from the Commission that such conservation laws and such rules, regulations and orders have been complied with; provided, this Section shall not prevent a temporary connection with any well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of such well to secure such certificate.

The Commission shall have the power to cancel any certificate of compliance issued under the provisions of this Section when it appears that the owner or operator of a well covered by the provisions of same has violated or is violating, in connection with the operation of said well or the production of oil or gas therefrom, any of the oil or gas conservation laws of this State or any of the rules, regulations or orders of the Commission promulgated thereunder. Upon notice from the Commission to the operator of any pipe line or other carrier connected to any such oil or gas well that the certificate of compliance with reference to such well has been cancelled by the Commission, the operator of such pipe line or other carrier shall disconnect from such well and it shall be unlawful for the operator of such pipe line or other carrier to transport oil therefrom until a new certificate of compliance has been issued by the

Commission. Upon notice from the Commission that a certificate of compliance as to any oil or gas well has been cancelled by it as herein provided, it shall be unlawful for the owner or operator of such well to produce oil or gas therefrom until a new certificate of compliance covering such well has been issued by the Commission as herein provided.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 180, ch. 76, § 11.]

#### Art. 6034. Books and Records

All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Commission for its information when required by the Commission to do so.

[Acts 1925, S.B. 84.]

#### Art. 6035. Report to Commission

Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the Commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors.

[Acts 1925, S.B. 84.]

#### Art. 6036. Penalty

In addition to being subject to any forfeiture that may be provided for by law and to any penalty that may be imposed by the Commission for contempt for the violation of its rules, regulations, or orders, any person violating any of the provisions of this Act or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or violating any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to a penalty of not more than One Thousand Dollars (\$1000) for each and every day of such violation, and for each and every act of such violation, to be recovered in any Court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one de-

fendant, in the county of the residence of any of them, or in the county in which the violation is alleged to have occurred, such suit by direction of the Commission to be instituted and conducted in the name of the State of Texas by the Attorney General or by the county or district attorney where such suit is brought. The recovery or payment of any such penalty shall not authorize the violation of any provision of this Act, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder.

Any person aiding or abetting any other person in the violation of this Act, or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to the same penalties as are prescribed herein for violation thereof by any such other person.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 694, ch. 313, § 4; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 3; Acts 1934, 43rd Leg., 3rd C.S., p. 120, ch. 64, § 2; Acts 1935, 44th Leg., p. 180, ch. 76, § 12.]

#### Art. 6036a. Notice of Hearing

No rule, regulation or order shall be adopted by the Commission under the provisions of this Act or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, dealing with the conservation of oil and gas and the prevention of the waste thereof, except after hearing upon at least ten (10) days notice given in the manner and form prescribed by the Commission; provided that in case an emergency is found by the Commission to exist which, in its judgment requires the making of a rule, regulation or order without notice and hearing, such emergency rule, regulation or order may be promulgated and shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order authorized herein shall remain in force no longer than fifteen (15) days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

The Commission may, without prior notice, revoke any rule, regulation or order promulgated by it; and it may, without prior notice, amend the same, provided the subject matter of the amendment was considered at the hearing made the basis for such rule, regulation or order. The renewal or extension of any rule, regulation or order shall be based upon a hearing after proper notice, subject to the provisions of this Section with reference to emergency rules, regulations and orders.

[Acts 1929, 41st Leg., p. 694, ch. 313, § 5; Acts 1935, 44th Leg., p. 180, ch. 76, § 7.]

Art. 6036b. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17

**Art. 6036c. False Applications and Reports; Abolition of Oaths**

Any person who makes or subscribes any application, report, or other document required or permitted to be filed with the Railroad Commission of Texas by the provisions of this Title 102, knowing that such application, report, or other document is false or untrue in any material fact; or who aids or assists in, or procures, counsels, or advises the preparation or presentation of any such application, report, or other document which is fraudulent, false, or incorrect as to any material matter, knowing the same to be fraudulent, false, or incorrect; or who knowingly simulates or falsely or fraudulently executes or signs any such application, report, or other document; or who knowingly procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for not less than two (2) years nor more than five (5) years, or by a fine of not more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment.

Provided that if any penalties prescribed elsewhere in this Title overlap as to offenses which are also punishable under this Article, then the penalties prescribed by this Article shall be in addition to such other penalties.

Provided further, that from and after the effective date of this Act no application, report, or other document required or permitted to be filed with the Railroad Commission of Texas under Title 102, shall be required to be under oath, verification, acknowledgment, or affirmation.

[Acts 1965, 59th Leg., p. 915, ch. 449, § 1, eff. June 16, 1965.]

Section 2 of Acts 1965, 59th Leg., p. 915, ch. 449 was a severability provision; section 3 of the act of 1965 provided: "The provisions of this Act are cumulative of existing law, but in the event any provision of this Act shall conflict with any other law the provisions of this Act shall prevail as to such conflict only."

**Art. 6037. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 171, ch. 36, § 6a, as added by Acts 1931, 42nd Leg., 1st C.S., p. 58, ch. 28**

**Art. 6038. Hearing, Notice**

No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association, owning or controlling and operating the pipe line or pipe lines affected.

[Acts 1925, S.B. 84.]

**Art. 6039. Reimbursement, When**

If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in trans-

portation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

[Acts 1925, S.B. 84.]

**Art. 6040. Exchange of Facilities**

Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the Commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line.

[Acts 1925, S.B. 84.]

**Art. 6041. Grades of Oil Carried**

No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, and the Commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation.

[Acts 1925, S.B. 84.]

**Art. 6042. Powers Not Limited**

Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

[Acts 1925, S.B. 84.]

**Art. 6043. Publication of Tariffs**

Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the Commission may prescribe, and the Commission shall require them to make reports, and may investigate their books and records kept in connection with such business.

[Acts 1925, S.B. 84.]

**Art. 6044. Monthly Reports**

The Commission shall require of such common carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the Commission as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may

make public the aggregate amounts held by all pipe lines making such reports, and of their aggregate storage capacity.

[Acts 1925, S.B. 84.]

#### Art. 6045. Discrimination Prohibited

No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day.

[Acts 1925, S.B. 84.]

#### Art. 6046. Rules for Prevention of Waste

The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

[Acts 1925, S.B. 84.]

#### Art. 6047. Penalty

Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved.

[Acts 1925, S.B. 84.]

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#### Art. 6048. Transportation of Crude Petroleum

Subject to the provisions of the law and the rules or regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

[Acts 1925, S.B. 84.]

#### Art. 6049. Salary of Expert and Other Expenses

The salary of the expert for the Commission and all other employees shall be paid out of the fund created under Article 6032, by monthly warrants drawn by the Comptroller on the State Treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

[Acts 1925, S.B. 84.]

#### Art. 6049a. Regulating Storage Tanks for Hire and Pipe Lines as Public Utilities

##### Public Utilities, Who Declared

Sec. 1. Every person, association of persons, or corporation owning, operating or managing any crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipe line, pipe lines, or otherwise, is hereby declared to be a public utility, subject to the provisions of this law.

##### Discrimination Forbidden

Sec. 2. No such public utility in its operations as such shall discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same similar circumstances, in the storage of crude petroleum.

##### Bond Required for Conformity to Regulations

Sec. 3. All such public utilities as herein defined shall within thirty days after this Act takes effect, or in case of persons, associations or corporations, hereafter engaging in such business, before they actually engage therein, file a bond which shall not exceed Twenty-five Thousand Dollars (\$25,000.00), properly executed, payable to the State of Texas, the amount of such bond and the sureties thereon to be subject to the approval of the Railroad Commission of the State of Texas. The amount of such bond may be changed from time to time by order of the Railroad Commission, after notice and hearing as prescribed by Article 6038, Revised Civil Statutes, in accordance with the volume of business done, or to be done, by such public utility and such bond or securities in lieu thereof as provided by Article 836 of the Revised Civil Statutes of Texas, shall be approved by the Railroad Commission before it is filed. Such bond shall be conditioned that the utility will observe the provisions of this law and the rules of the Railroad Commission in so

far as its business is regulated and controlled by such Commission, and that the utility will exercise ordinary care in the storage, preservation, handling and delivery of all petroleum products entrusted to it and shall guarantee the classification, measurements and grades made by such public utility, under its authority in conformity herewith. The bond shall be for the benefit of the patrons of such utility and their assignees as though they were named obligees therein and they shall severally have the right of suit thereon.

#### Regulations by Railroad Commission

Sec. 4. The Railroad Commission of Texas shall establish and enforce rules and regulations governing the character of facilities to be furnished by such utilities, the forms of receipts to be issued by them, the rates, charges and regulations for the storage of crude petroleum by such public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, the delivery of such products, and it shall also exercise such power upon petition of any person showing a substantial interest in the subject matter thereof.

#### Lien for Storage Charges

Sec. 5. Any such public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against such commodity, and/or the transportation charges accrued to or paid or advanced by it, superior to all other liens thereon, except lien for taxes.

#### Monthly Statements as to Quantity of Petroleum

Sec. 6. Every common carrier of crude petroleum within this State as defined by law and every public utility as defined herein shall on or before the twentieth day of each calendar month file with the Railroad Commission of Texas, and post in a conspicuous place, accessible to the general public, in each of its division offices, and in its principal office in this State, a statement, duly verified, containing the following information concerning its business during the preceding calendar month:

1. How much petroleum, crude or refined, was in the actual and immediate custody of such carrier or public utility at the beginning and close of such month, and where same was located or held, including the location and designation of each tank or place of deposit, and the name of its owner.

2. How much petroleum, crude or refined, was received by such carrier or public utility during such month.

3. How much petroleum, crude or refined, was delivered by such carrier or public utility during such month.

4. What quantity of such petroleum, crude or refined, is held by it for the account of itself or parent or affiliated organizations.

5. The available empty storage owned or controlled by it and where located.

6. The foregoing information shall be set out in each statement separately as to crude petroleum and each refined product thereof.

#### Rates Established by Railroad Commission After Hearings

Sec. 6a. The Commission shall establish and promulgate rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe line and receiving, transferring and loading facilities. Such rates shall include both single and joint line transportation, deductions for evaporation and shrinkage, demurrage, storage, and overage, charges, and all other similar items. The basis of such rates shall be such as will provide a fair return upon the aggregate value of the property of any such carrier used and useful in the services performed after providing reasonable allowance for depreciation and other proper factors, and for reasonable operating expenses under honest, efficient and economical management, and provided further that the Commission shall have reasonable latitude in the establishment and adjustment of competitive rates.

Immediately after this Act shall become effective it shall be the duty of the Commission to hold hearings as to rates now charged and shall reset them on all existing and operating lines, in accordance with the preceding article, taking into consideration the past earnings of such carrier.

When any carrier makes application or files tariff to establish a new rate, either for a new or old line, a temporary rate may be placed into effect immediately upon filing said tariff with the Commission. If any rates shall be filed, shippers who have paid the rates so filed by the pipe line company shall have the right to reparation or reimbursement of all excess rates or transportation charges so paid over and above the rate as finally determined on all shipments. When any person or persons at interest hereafter file an application for a change in a rate or rates the Commission shall call a hearing or hearings and shall immediately thereafter establish and promulgate a rate or rates in accordance with the basis herein set out. The Commission, shall on its own motion or motion of any interested person, hold a hearing or hearings when it has reason to believe that any rate or rates do not conform to the basis herein set out, said hearings or hearing to be for the purpose of adjusting, establishing and promulgating a proper rate or rates, and said Commission shall hold a general hearing once each year for the purpose of

adjusting all rates to conform to the basis of rates and charges as herein set out. Article 6037, Revised Civil Statutes, is hereby repealed.

No common carriers by pipe line within this State shall hereafter abandon any of its connections or lines except under authority of a permit granted by the Railroad Commission, or with written consent of the owner or duly authorized agent of the wells to which connections are made. Before granting any such permit the Railroad Commission shall issue notice and have a hearing as now provided for in Section 6038 of the Revised Civil Statutes of Texas for 1925.

**Hearing by Commission as to Enlargement or Extension of Facilities**

Sec. 7. The Railroad Commission of Texas may, after hearing in a proceeding upon complaint by a party at interest, or upon its own initiative without complaint, and after notice and hearing as provided by Article 6038, Revised Civil Statutes of Texas, 1925, authorize or require by order any person, association of persons, or corporation owning or operating pipe lines in the State of Texas, which is a common carrier as defined by law, or owning, operating, or managing any crude petroleum storage tanks, or crude petroleum facilities for the public for hire, to extend or enlarge such pipe lines, or storage facilities, provided such extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of such common carrier or public utility to perform its duty to the public.

**Common Purchaser of Petroleum Defined; Discrimination Forbidden**

Sec. 8. Every person, association of persons or corporation who purchases crude oil or petroleum in this State, which is affiliated through stock-ownership, common control, contract, or otherwise, with a common carrier by pipe line, as defined by law, or is itself such common carrier, shall be a common purchaser of such crude petroleum and shall purchase oil offered it for purchase without discrimination in favor of one producer or person as against another in the same field, and without unjust or unreasonable discrimination as between fields in this State; the question of justice or reasonableness to be determined by the Railroad Commission, taking into consideration the production and age of wells in respective fields and all other proper factors. It shall be unlawful for any such common purchaser to discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the purchase of crude oil or petroleum to be marketed, such production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that such production bears to the total production offered for market in such

field. The Railroad Commission of Texas shall have authority, however, to relieve any such common purchaser, after due notice and hearing as hereinafter provided, from the duty of purchasing petroleum of inferior quality or grade.

**Purchases Under Regulations Prescribed by Commission**

Sec. 8a. That in order to further conserve the natural gas resources of this State every person, association of persons, joint stock company, limited co-partnership, partnership, corporation, gas pipe line company or gas purchaser now, or hereafter, claiming or exercising the right to carry or transport natural gas by pipe line, or pipe lines, for hire, compensation or otherwise within the limits of this State, or which is now engaged or shall hereafter engage in the business of purchasing, or taking, natural gas, or residue gas or casing-head gas shall be a common purchaser thereof, and shall purchase, or take, such gas under such rules or regulations as may be prescribed by the Commission, in the same manner, under the same inhibitions against discriminations and subject to the same provisions as are herein set out with respect to common purchasers of oil.

**Additional Persons as Common Purchasers; Rates and Charges**

Sec. 8aa. In addition to persons enumerated in Section 8 hereof, any and all persons, associations of persons, or corporations operating any crude oil gathering system, whether by pipeline or by truck, other than persons, associations of persons, or corporations transporting only crude oil from properties in which any such person, association of persons, or corporation owns an operating interest, which may now or hereafter purchase crude oil or petroleum in this state, whether they be common carriers or affiliated with common carriers shall be a common purchaser of such crude oil or petroleum offered for purchase without discrimination in favor of one producer or person as against another in the same field and without unjust or unreasonable discrimination as between fields in this state as provided in Section 8 hereof. Such common purchasers shall be subject to the same regulation concerning rates and charges for gathering, transporting, loading and delivering crude petroleum as set out in Section 6a hereof.

**Operation of Gathering Systems for Crude Petroleum**

Sec. 8aaa. It is declared that the operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase, or purchase and sale of crude petroleum, is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be

conducted, unless the person, association of persons or corporation operating such gathering system so used in connection with such business be a common purchaser within the purview of this law and subject to the jurisdiction herein conferred upon the Commission; provided, however, the operation of any crude oil gathering system by persons, association of persons or corporation transporting only crude oil from properties in which any such person, association of persons or corporation owns an operating interest, shall not be deemed to be in the business of purchasing, or of purchasing and selling crude petroleum within the meaning of this Article.

#### Rules and Regulations by Railroad Commission

Sec. 8b. It shall be the duty of the Railroad Commission of Texas to see that the provisions of this Act are fully complied with, and it shall have the power, after notice and hearing, to make rules, regulations and orders, defining the distance that extensions or gathering lines shall be made to all oil or gas wells; and such other rules, regulations or orders as may be necessary to carry out the provisions of this Act, and to prevent discrimination in purchases.

#### Anti-Trust Laws Unaffected

Sec. 8bb. It is expressly provided that no provision of this Act shall be construed as in any wise modifying, limiting, changing, repealing, or affecting any part of the present laws of this State defining and regulating trusts, monopolies, and conspiracies in restraint of trade; and that no provision of this Act shall be construed as authorizing any agreement and/or combination of capital, skill, or acts and/or any combination or consolidation now prohibited by the Anti-trust Laws of this State and/or the laws of this State prohibiting trusts, monopolies, and/or conspiracies in restraint of trade; and that no provision of this Act is intended or shall be construed as authorizing any agreement, act, combination, consolidation, or otherwise, which is now prohibited under the Anti-trust Laws of this State and/or the laws prohibiting and defining trusts, monopolies and/or conspiracies in restraint of trade.

#### Restrictions as to Oil Transported

Sec. 8c. No person, association of persons or corporation, whether a common carrier or otherwise, shall be permitted to transport crude oil or petroleum in this State unless such crude oil or petroleum has been produced and/or purchased in accordance with the laws of the State of Texas and/or any order, rule or regulation of the Railroad Commission made in pursuance thereof.

#### Enforcement by Railroad Commission

Sec. 9. The Railroad Commission of Texas shall have authority to make rules and regulations for the enforcement of the provisions of this Act.

#### Commission's Jurisdiction to Hear Complaints

Sec. 10. Any person, association of persons or corporation, or the Attorney General of Texas on behalf of the State, may institute proceedings before the Railroad Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same after the notice provided by Article 6038, Revised Civil Statutes of Texas. The Commission shall not make any order establishing, prescribing or modifying rates, rules or regulations, as herein provided, except upon like notice and hearing as provided in said Article 6038.

#### Penalty for Violations

Sec. 11. For the violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder or any order passed by the Railroad Commission in pursuance of any such provision, rule or regulation, such person, association of persons, or corporation shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00) for each offense recoverable in the name of the State in any District Court in Travis County, Texas, and each day of such violation shall constitute a separate offense. One half of such penalty may be recovered by and for the use of any person, association of persons or corporation against whom there shall have been an unlawful discrimination as herein defined, such suit to be brought in the name of and for the use of the party or parties aggrieved.

#### Attorney General May Institute Proceedings for Forfeiture of Charter for Violations

Sec. 11a. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission, in pursuance of such provision, by any domestic corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County, Texas, for the purpose of forfeiting the charter of such corporation, and enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the charter of such corporation may be forfeited and the injunction may be granted, provided said forfeiture and injunction shall be in addition to all other penalties.

#### Forfeiture of Charters of Foreign Corporations

Sec. 11b. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission in pursuance of such provision, by any foreign corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County for the purpose of cancelling the permit of such corporation and of

enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided said cancellation and injunction shall be in addition to all other penalties.

**Actions for Damages for Discriminations**

Sec. 11c. When any person, persons, association or corporation is discriminated against by a common purchaser as defined herein in favor of the production of said common purchaser, a cause of action for damages, when such has occurred, shall lie against said common purchaser and said person, persons, association or corporation may bring suit for same in any court of competent jurisdiction in the county in which the damage occurred.

**Prevention of Discrimination**

Sec. 11d. The Railroad Commission shall make inquiry in each field concerning the connections of the various producers and when discrimination is found to be practiced by any common purchaser as defined in this Act the said Railroad Commission shall issue an order to such common purchaser to make such reasonable extensions of their lines, such reasonable connections and such ratable purchases as will prevent such discrimination. The Commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer so discriminated against.

**Duties and Responsibilities of Common Purchasers, Purchasers, Gatherers or Transporters**

Sec. 11dd. Notwithstanding the provisions of any Statute or law, including Article 6049a, Revised Civil Statutes, 1925, as amended, none of the provisions of this Act<sup>1</sup> shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer or transporter of natural gas, residue gas, or casinghead gas.

<sup>1</sup> Acts 1965, 59th Leg., p. 611, ch. 303 which amended sections 8aa and 11d and which added sections 8aaa and 11dd to this article.

**Injunction by Attorney General to Prevent Discrimination**

Sec. 11e. The Railroad Commission shall, upon information that discrimination is practiced in its purchases by any common purchaser, request the Attorney General to bring a mandatory injunction suit against said common purchaser to compel such reasonable extensions as are necessary to prevent discrimination.

**Receiver at Instance of Commission for Violation of Regulations**

Sec. 11f. Whenever, any order, rule or regulation promulgated by the Commission pursuant to this Act has been finally adjudged to be valid, in whole or in part, in any suit to which the Commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate

such rule, regulation, order or judgment, or shall suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order or judgment, the Commission shall have the power, and it shall be its duty, to make, application to the Judge of the trial court, setting out such rules, regulation, order or judgment and that such party, subsequent to the date of such judgment, has violated or is violating such rule, regulation, order, or judgment, and praying that a receiver be appointed as provided in this Section. Thereupon the judge of such trial court may after notice and hearing, appoint a receiver of the property involved or used in violating such rule, regulation, order, or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and discharge the receiver only upon showing that such party has not wilfully violated nor suffered property owned or controlled by him to be used in violating such rule, regulation, order or judgment or upon other good cause shown. In its discretion such court may, before dissolving such receivership or discharging such receiver, require the party applying for such dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule, regulation or order so adjudged to be valid. In determining the amount of such bond, the judge shall take into consideration all of the facts and circumstances surrounding the parties which he may deem necessary to determine the reasonableness of the amount of such bond and any bond so executed, if made by any bonding or surety company, shall be by some company authorized to do business in Texas. Such bond shall be made payable to, and be approved by, the judge of said court and shall be for the use and benefit of, and may be sued on, by all persons who may suffer damage by reason of any further violation by the party giving the bond of the rule, regulation or order so adjudged to be valid, and who may bring suit thereon. From time to time on motion the court may increase or decrease the amount of such bond, and may require new or additional sureties as the facts may warrant or justify.

**Discrimination as to Royalty Oil Forbidden**

Sec. 11g. Any common purchaser of oil or gas as herein defined shall, in making purchases of royalty oil, comply with all the provisions of this Act, and shall not discriminate between royalty and/or land owners in making such purchases. Neither shall said common purchaser unreasonably delay payments to said land and/or royalty owner for said oil or gas

purchased. For violation whereof in addition to the other penalties herein set out, the land and royalty owner or owners damaged thereby shall have a cause of action against said common purchaser for damages and may file suit for same in any court of competent jurisdiction in the county where the royalty lies.

**Provisions Applicable to Enforcement**

Sec. 11h. All the provisions of Title 102 of the Revised Civil Statutes as amended shall apply in the enforcement of this Act.

**Appropriation**

Sec. 11i. There is hereby appropriated to the Railroad Commission of Texas for its use in complying with this Act an additional sum of Fifty Thousand Dollars (\$50,000.00), or so much thereof as may be necessary, out of the money raised each year from the tax collected by virtue of Article 6032 Revised Civil Statutes of 1925, and if the money so raised by said tax is insufficient to pay this appropriation therefrom, then the balance of this appropriation shall be paid out of the General Revenue not otherwise appropriated.

Sec. 11j. Repealed by Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 11.

**Review by Persons Aggrieved**

Sec. 12. Any person or party at interest aggrieved by any order of the Railroad Commission of Texas under this Act, may have such order reviewed by proceedings in the manner prescribed by Article 6453, Revised Civil Statutes of Texas. The proceedings upon appeal shall be in like manner as prescribed by Article 6453.

[Acts 1930, 41st Leg., 5th C.S., p. 171, ch. 36; Acts 1931, 42nd Leg., 1st C.S., p. 58, ch. 28; Acts 1965, 59th Leg., p. 611, ch. 303, §§ 1 to 4.]

**Art. 6049b. Marginal Wells Defined; Curtailing Production**

Sec. 1. The term "marginal well" as used herein means any oil well which is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil as herein set out, as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its maximum daily production were artificially curtailed. The following described wells shall be deemed "marginal wells" in this State:

(a) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of ten (10) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a depth of two thousand (2,000) feet or less.

(b) Any oil well incapable of producing its maximum daily capacity of oil except

by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of twenty (20) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than two thousand (2,000) feet and less in depth than four thousand (4,000) feet.

(c) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of twenty-five (25) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than four thousand (4,000) feet and less in depth than six thousand (6,000) feet.

(d) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of thirty (30) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than six thousand (6,000) feet and less in depth than eight thousand (8,000) feet.

(e) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of thirty-five (35) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than eight thousand (8,000) feet.

The words, "gas lift," when used in this Section shall mean gas lift by the use of gas not in solution with oil produced.

Sec. 2. To artificially curtail the production of any "Marginal Well" below the marginal limit as set out above prior to its ultimate plugging and abandonment is hereby declared to be waste, and no rule or order of the Railroad Commission of Texas, or other constituted legal authority, shall be entered requiring restriction of the production of any "Marginal Well" as herein defined.

[Acts 1931, 42nd Leg., p. 92, ch. 58; Acts 1933, 43rd Leg., p. 215, ch. 97; Acts 1941, 47th Leg., p. 892, ch. 550, § 1.]

**Art. 6049c. Oil and Gas Conservation**

Secs. 1 to 3. [Amend arts. 6008, 6014 and 6036.]

Sec. 4. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

**Powers and Duties of Railroad Commission**

Sec. 5. The Commission shall have the power, and it shall be its duty, from time to time to inquire into the production, storage, transportation, refining, reclaiming, treating, marketing or processing of crude petroleum oil and natural gas, and the reasonable market demand therefor, in order to determine whether or not waste exists or is imminent, or whether the oil

and gas conservation laws of Texas or the rules, regulations, or orders of the Commission promulgated thereunder are being violated. It shall be the duty of all persons producing, storing, transporting, refining, reclaiming, treating, marketing, or processing crude petroleum oil or natural gas or the products of either to keep in this State accurate records as to the amount produced, stored, transported, refined, reclaimed, treated, marketed or processed by such person; and as to the source from which such person has produced, obtained or received crude petroleum oil, natural gas or the products of either, and the disposition made of same. The Commission shall have the power to require all such persons to make and file with the Commission sworn statements or reports as to facts within their knowledge or possession pertaining to the reasonable market demand for crude petroleum oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude petroleum oil or natural gas and products of either, including those facts enumerated herein; and to require any well, lease, refinery, plant, tank or storage, or pipe line, or gathering line, belonging to or under the control of any such person to be inspected or gauged by the agents of the Commission whenever and as often and for such periods as the Commission may deem necessary; and the Commission and its agents and the Attorney General and his assistants and representatives may likewise examine the books and records of any such person as often as deemed necessary for the purpose of ascertaining the facts concerning the matters and things hereinabove set forth. The failure of any corporation chartered under the laws of this State to comply with the provisions of this Section and to keep such records in this State, or the refusal to permit the officers herein mentioned to inspect and examine the records herein required, shall constitute grounds for a forfeiture of its charter rights and privileges and the dissolution of its corporate existence. Any such violation by a foreign corporation shall be ground for enjoining and forever prohibiting such corporation from doing business in this State. It shall be the duty of the Attorney General when in his judgment the public interest requires it, upon his motion, and without leave or order of any judge or Court, to institute suit or other appropriate action in Travis County for forfeiture of charter rights of any domestic corporation and enjoining any foreign corporation from doing business in this State, when any such corporation is deemed guilty of violating the provisions of this Section; and, upon judgment against such defendant for violation of the provisions of this Section, the Court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation and enjoin a defendant foreign corporation from doing business in this State thereafter.

Sec. 6. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

#### Hearing by Commission as to Waste

Sec. 7. Upon the initiative of the Commission, or upon the verified complaint of any person interested in the subject matter, that waste of crude petroleum oil or natural gas is taking place in this State, or is reasonably imminent, the Commission may hold a hearing, at such time and place as it may fix, to determine whether or not waste is taking place, or is reasonably imminent and what, if any, rule, regulation, or order should be made or what, if any, other action should be taken to correct, prevent or lessen such waste. At said hearing all parties interested shall be entitled to be heard and introduce evidence and to require the attendance of witnesses, and the production of evidence may be required as provided by law. If upon the hearing the Commission shall find that waste is taking place, or is reasonably imminent, the Commission shall make such rule, regulation or order as in its judgment is reasonably required to correct, prevent or lessen such waste.

In the event any such rule, regulation or order which the Commission may adopt provides for the limitation or fixing of the production of crude petroleum oil, or of natural gas from wells producing gas only, in any pool or portion thereof, the Commission shall distribute, prorate, or otherwise apportion or allocate, the allowable production among the various producers on a reasonable basis.

From and after the promulgation of any rule, regulation or order of the Commission it shall be the duty of each person affected thereby to comply with the same.

#### Suits Authorized by Persons Aggrieved by Commission's Regulations or Orders

Sec. 8. Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid.

Sec. 9. Repealed by Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 11.

#### Notice to Commission as Condition Precedent to Injunction; Procedure

Sec. 10. No injunction, whether temporary restraining order, temporary injunction, permanent injunction, or other character of injunctive relief, shall be granted against the Rail-

road Commission, its members, agents, and representatives, to restrain it or them from enforcing any rule, regulation, or order made and promulgated by the Railroad Commission under the conservation statutes of this State relating to oil and gas, or any amendments thereof, or restrain the enforcement of any such statute, except after notice to the Commission and a hearing as hereinafter provided; provided that when a petition or application is filed asking for any such character of temporary injunctive relief, the clerk of the court in which such petition or application is filed shall issue notice to the Commission in writing, which notice shall contain the docket number, style, and a brief statement of the nature of such suit, and such notice shall be served on the Commission by delivering a copy of such citation to the Commission or any member thereof, or to the Secretary thereof, in Travis County, for the service of other citations, and five (5) days from and after the service of such notice a hearing may be had on such application; provided further that the rule, regulation, or order complained of shall be taken as prima facie valid and the use and introduction of the verified petition of plaintiff shall not be sufficient to overcome the prima facie validity of the rule, regulation, or order complained of, or to empower the court to grant any injunctive relief against the enforcement of said rule, regulation, or order; provided further, that before any order granting any character of injunctive relief against any such statute or against any such rule, regulation, or order of the Commission shall become effective the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in an amount to be fixed by the court reasonably sufficient to indemnify all persons when<sup>1</sup> the court may find from the facts proven will suffer damages by reason of the violation of the statute, rule, regulation, or order complained of, such persons to be named in the order of the judge when the amount of the bond is fixed by the court and entered of record; provided further, that the finding of the court that any party is likely to suffer damage shall not be admissible as evidence of damages in any suit on such bond. In determining the amount of such bond it shall be the duty of the judge to take into consideration all of the facts and circumstances surrounding the parties and the ability of the plaintiff to make such bond in order to determine the amount and the reasonableness thereof under the facts and circumstances. Any bond made or executed by any bonding or surety company shall be by some company authorized to do business in Texas. Such bond shall be made payable and approved by the judge of said court and shall be for the use and benefit of and may be sued upon by all persons named in said order who may suffer damages by reason of the violations of such statute, rule, regulation, or order. Upon motion and for good cause shown, the court, after notice to the parties, may from time to time increase or decrease the amount of such bond, and may add

new beneficiaries, and may require new or additional sureties as the facts may justify. Any person interested in the subject matter may, in the discretion of the court, intervene in any such suit. All suits on such bonds shall be instituted within (6) months from the date of the final determination of the validity in whole or in part of such rule, regulation, or order.

<sup>1</sup> So in enrolled bill. Probably should read "whom."

Appeals Advanced in Appellate Court; Jurisdiction of Courts of Civil Appeals to Issue Writs

Sec. 11. After notice and hearing is had upon application for any such injunctive relief either party to said suit has the right of appeal from any judgment or order therein granting or refusing any injunction, whether temporary restraining order, temporary injunction, permanent injunction, or other character of injunctive relief, or from any order granting or overruling a motion to dissolve any such injunction. Said appeal shall at once be returnable to the appellate court and said action so appealed shall have precedence in said appellate court over all cases, proceedings, and causes of a different character therein pending. The provisions and requirements of Article 4662, Revised Civil Statutes of 1925, relating to temporary injunctions shall likewise apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve such temporary restraining order, under the provisions of this Act. In the Court of Civil Appeals such court shall immediately and at as early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the Supreme Court or writ of error thereto be requested or granted, it is here made the duty of the Supreme Court immediately to set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other causes, proceedings and causes of a different character in such court.

The Courts of Civil Appeals and the judges thereof are hereby vested with jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of any trial court or judge granting any character of injunctive relief without notice and hearing in violation of the requirements of Section 10, Chapter 26, Acts of the First Called Session of the Forty-second Legislature, as amended by this Act. Whenever it shall appear that such requirements of said Section with respect to notice and hearing have not been complied with, upon proper application presented by the Railroad Commission to the Court of Civil Appeals having jurisdiction, the said Court of Civil Appeals shall be empowered and it shall be its duty to issue instant the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge, from enforcing or attempting to enforce the provisions of the injunction issued by him, and to prohibit and restrain the party or parties in whose favor such order has been entered from acting or attempt-

ing to act under the protection of said order or from violating the statute or the rule, regulation, or order of the Commission attacked.

#### Receiver for Property Involved in Violations

Sec. 12. Whenever any order, rule or regulation promulgated by the Commission has been finally adjudged to be valid, in whole or in part, in any suit to which the Commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order or judgment, or shall thereafter suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order, or judgment, the Commission shall have the power, and it shall be its duty to make application to the judge of the trial court, setting out such rule, regulation, order or judgment and that such party, subsequent to the date of such judgment, has violated or is violating such rule, regulation, order or judgment, and praying that a receiver be appointed as provided in this Section. Thereupon, the judge of such trial court may, after notice and hearing, appoint a receiver of the property involved or used in violation of such rule, regulation, order or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and to discharge the receiver upon such terms as the court may prescribe.

#### Proceedings by Commission Not to Impair Owner's Action for Damages

Sec. 13. Nothing herein contained or authorized, and no suit by or against the Commission, and no penalties imposed upon or claimed against any party violating any Statute of this State, or any rule, regulation or order of the Commission, shall impair or abridge or delay any cause of action for damages, or other relief, any owner of any land or any producer of crude petroleum oil or natural gas, or any other party at interest, may have or assert against any party violating any rule, regulation or order of the Commission, or any judgment herein mentioned. Any party owning any interest in any property or production which may be damaged by any other party violating this Act or any other Statute of this State prohibiting waste or violating any valid rule, regulation or order of the Commission, may sue for and recover such damages, and have such other relief as he may be entitled to in law or in equity.

Sec. 14. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

Sec. 15. [Amends art. 6029.]

#### Obligations Imposed by Other Acts Unaffected

Sec. 16. Nothing in this Act contained shall be construed to relieve any party from

the duties and obligations imposed by Chapter 36, Page 17,<sup>1</sup> of the Acts of the Forty-first Legislature at its Fifth Called Session, commonly known as the Common Purchaser Act and all amendments thereto,<sup>2</sup> nor to modify or change any provisions of said Acts. Nothing in this Act contained shall modify or change in any way the terms and provisions of Senate Bill No. 337, passed by the Forty-second Legislature at its Regular Session, commonly known as the Marginal Well Bill.<sup>3</sup> This Act shall not repeal any existing law except where it supersedes such existing law or is in conflict therewith.

<sup>1</sup> So in enrolled bill. Probably should read "Page 171."

<sup>2</sup> Article 6049a.

<sup>3</sup> Article 6049b.

#### Act Cumulative

Sec. 17. This Act shall be cumulative of all laws of the State of Texas not inconsistent herewith, relative to crude petroleum oil and natural gas.

#### Persons Enforcing Orders of Commission as State Employees

Sec. 18. All persons entrusted with the enforcement of the orders, rules, and regulations of the Commission shall be regular employees of the State of Texas and paid by the State of Texas, and no persons other than the regular employees of the State of Texas shall be charged with or relied upon for the performance of any such duties.

#### Partial Invalidity

Sec. 19. If any of the sections, clauses, or any provisions of this Act or of any other Act referred to by this Act shall be held unconstitutional, or otherwise invalid or unenforceable, such holding shall not have the effect of nullifying or in any wise affecting the remainder of this Act, and the parts of this Act not so held to be unconstitutional or invalid shall remain in full force and effect.

#### Definitions

Sec. 20. The term "party" as used in this Act shall include all persons, firms, associations, corporations, trustees and receivers. The term "Commission" shall mean the Railroad Commission of Texas.

#### Anti-Trust Laws Unaffected

Sec. 21. This Act shall not amend, repeal, change, alter or affect in any manner the Anti-trust Laws of this State.

Sec. 22. [Amends art. 6032.]

#### Employees and Clerical Help of Commission

Sec. 23. The Commission is hereby authorized and directed to employ such supervisors, deputy supervisors and umpires as may be necessary to carry out the provisions of this Act and all related laws and orders, rules and regulations of such Commission made thereunder, and it shall likewise employ such other assistants and clerical help as may be necessary from time to time for the same purpose, and there is hereby expressly appropriated out of the funds derived from the tax levied in this Act, a sufficient amount to pay such salaries

and expenses. The salaries of such employees shall be fixed by the Railroad Commission until provided for by the next Session of the Legislature, such salaries to be reasonable and not to exceed salaries now being paid for similar service.

[Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, §§ 3, 5, 8; Acts 1934, 43rd Leg., 2nd C.S., p. 104, ch. 45, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 120, ch. 64, § 1; Acts 1935, 44th Leg., p. 180, ch. 76, §§ 5, 6, 14; Acts 1935, 44th Leg., p. 74, ch. 28, §§ 1, 2.]

#### Art. 6049d. Conservation of Petroleum Oil and Natural Gas; Duties of Railroad Commission

Sec. 1. [Amends art. 6014.]

Sec. 2. [Classified as art. 6014a.]

Sec. 3. [Amends art. 6049c, § 5.]

##### Determining Allowable Production; Allocation

Sec. 4. Whenever the full production, from wells producing gas only, from any common source of supply of natural gas in this State is in excess of the reasonable market demand, the Railroad Commission shall inquire into the production and reasonable market demand therefor and shall determine the allowable production from such common source of supply, which shall be the reasonable market demand which can be produced without waste, and the Commission shall allocate, distribute or apportion the allowable production from such common source of supply among the various producers on a reasonable basis, and shall limit the production of each producer to the amount allocated or apportioned to such producer.

Sec. 5. [Amends art. 6049c, § 7.]

##### Allocation Among Pools to Prevent Discrimination

Sec. 6. In order to prevent unreasonable discrimination in favor of one pool as against another, and upon written complaint and proof of such discrimination, the Commission is authorized to allocate or apportion the allowable production of crude petroleum oil upon a fair and reasonable basis among the various pools in the State; provided, however, that in allocating or ascertaining the reasonable market demand for the whole State the reasonable market demand of one pool shall not be discriminated against in favor of any other pool; and provided further, that the Commission shall ascertain the reasonable market demand of each such respective pool as the basis for determining the allotments to be assigned each such respective pool, to the end that such discrimination may be prevented.

##### Consideration in Administration of Act to Consuming Public

Sec. 6-a. It is further provided that in the administration of this Act the Commission shall, at all times, take into consideration and protect the rights and interests of the purchasing and consuming public of crude oil, and all of its products, such as gasoline, and lubricating oil; provided however, that if this Section be held for any reason unconstitutional the remaining sections of this Act shall, neverthe-

less, be valid; and it is declared that such remaining portions would have been included in this Act though this particular Section had been omitted.

Secs. 7, 8. [Amend arts. 6029, 6049c, § 8.]

##### Partial Invalidity

Sec. 9. If any section, subdivision, paragraph, sentence, clause or word of this Act to be held to be unconstitutional, the remaining portions of same shall, nevertheless be valid; and it is declared that such remaining portions would have been included in this Act though the unconstitutional portions had been omitted.

##### Act Cumulative; Definitions

Sec. 10. This Act shall be cumulative of all laws of the State of Texas, not inconsistent herewith and not hereby expressly repealed or amended, and the words "crude petroleum oil" and "natural gas" as used herein are not to be construed as referring to different substances than those referred to herein and in existing statutes by the use of the usual words "oil" and "gas." The word "Commission" shall mean the Railroad Commission of Texas. The words "pool," "common pool," "field," and "common source of supply" shall mean a common reservoir.

Sec. 11. [Repeals art. 6049a, § 11j and art. 6049c, § 9.]

##### Construction as to Acts Repealed

Sec. 12. Nothing in this Act shall be construed to repeal Chapter Thirty-Six of Acts of the Forty-First Legislature, Fifth Called Session, known as the Common Purchaser Bill, and Amendments thereto,<sup>1</sup> except as specifically repealed hereby or inconsistent herewith; and this Act shall not be construed to repeal or modify Senate Bill No. 337, passed by the Forty-Second Legislature, at its Regular Session, known as the Marginal Well Bill.<sup>2</sup>

<sup>1</sup> Article 6049a.

<sup>2</sup> Article 6049b.

##### Anti-Trust Laws Unaffected

Sec. 13. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change or modify the anti-trust and/or monopoly statutes of this State, and that no provision of this Act shall in any manner directly or indirectly authorize a violation of such anti-trust and/or monopoly statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of Sections 10, 11 and 12, or any other sections of this Act, it is the legislative intent that no provision of this Act shall in any manner, affect, alter, diminish or amend any provision of the anti-trust and/or monopoly statutes of this State, or in any manner authorize a violation of such anti-trust and/or monopoly statutes; and it is further especially provided that if any provision of this Act shall be so construed by any court of this State as to in any manner affect, alter, diminish, or modify any provision of the anti-trust and/or monopoly statutes of this

State, then in that event any such section, subsection, sentence or clause or any provision of this Act so construed as conflicting with said monopoly and/or anti-trust statutes, it is hereby declared null and void rather than the anti-trust and/or monopoly statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of Sections 10, 11 and 12, or any other section or sections of this Act, regardless of any statement therein to the contrary.

Sec. 14. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

[Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2; Acts 1935, 44th Leg., p. 180, ch. 76, §§ 9, 15.]

### Art. 6049e. Conservation of Petroleum Oil or Natural Gas

#### Definitions

Sec. 1. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when used in this Act, to-wit: "Commission" means the Railroad Commission of Texas. "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind. The word "pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both. The words, "crude petroleum oil," "crude petroleum," "crude oil," and "oil" mean the same thing whether used in this Act or elsewhere in the conservation Statutes of this State relating to oil and gas. The words "natural gas" and "gas" mean the same thing whether used in this Act or elsewhere in the conservation Statutes of this State relating to oil and gas. The words "product" or "product of crude petroleum oil or natural gas" mean any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all derivatives or by-products of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of crude petroleum oil, or natural gas, or any derivatives or by-products thereof.

Secs. 2 to 7. [Amend arts. 6014; 6014a; 6029; 6049c, §§ 5, 7; 6036a.]

#### Newspaper Publication of Rules, Regulations or Orders of Commission

Sec. 8. The publication in any newspaper of any rule, regulation or order of the Commission shall not be required before such rule, regulation, or order shall become effective for any purpose except as may be required for the enforcement of the criminal provisions of Chapter 165, Acts of the Forty-third Legisla-

ture, Regular Session, or any amendment thereof.<sup>1</sup>

<sup>1</sup> Article 6049g.

Sec. 9. [Amends art. 6049d, § 6.]

#### Prohibition of Purchase, Acquisition or Sale in Violation of Statute

Sec. 10. The purchase, acquisition, or sale, or the transportation, refining, processing, or handling in any other way, of crude petroleum oil or natural gas, produced in whole or in part in violation of any oil or gas conservation Statute of this State or of any rule, regulation or order of the Commission thereunder, is hereby prohibited.

The purchase, acquisition, or sale, or the transportation, refining, processing, or handling in any other way, of any product of crude petroleum oil or natural gas which product is derived in whole or in part from any crude petroleum oil or natural gas or any product of either, which crude petroleum oil or natural gas or product was in whole or in part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation Statute of this State, or of any rule, regulation or order of the Commission thereunder, is hereby prohibited.

The Commission shall have the power to promulgate and enforce such rules, regulations and orders as may be necessary to carry the provisions of this Section into effect and to prevent a violation thereof; provided that whenever the Commission requires a showing that refined products were manufactured from oil legally produced, such requirement shall be of uniform application throughout the State; and provided that whenever such rule, regulation or order is promulgated for the purpose of controlling any condition in any local area or to prevent a violation in any local area, then upon the complaint of any person that the same or similar conditions exist in some other local area and the promulgation and enforcement of such rule could be beneficially applied to such additional area, the Commission shall determine whether or not such conditions do exist, and if it be shown that they do, then such rule, regulation or order shall be enlarged to include such additional area.

None of the provisions of this Section shall apply to the purchase of any products of crude petroleum when made by the ultimate consumer from a retail distributor thereof.

Secs. 11, 12. [Amend arts. 6033, 6036.]

#### Commission Through Attorney General Authorized to Restrain by Suit Violation, Jurisdiction of Suits

Sec. 13. Whenever it shall appear that any person is violating or threatening to violate any provision of this Act, or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation or order of the Commission promulgated thereunder, the Commission, through the Attorney General, shall bring suit in the name of the State of Texas against such person in any Court of com-

petent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person from violating such Statute or such rule, regulation, or order of the Commission, or any part thereof; and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person of any injunction granted under the provisions of this Section shall be sufficient grounds for the appointment by the Court, either upon its own motion or that of the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person, and to exercise such powers as in the judgment of the Court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt.

Secs. 14, 15. [Amend arts. 6049c, § 8 and 6049d, § 6-a.]

Act Cumulative

Sec. 16. This Act shall be cumulative of all laws of the State of Texas, not inconsistent herewith and not hereby expressly repealed or amended.

Repeals, Penalties and Pending Prosecutions not Affected

Sec. 17. Articles 6007, 6009, 6011, and 6017 of the Revised Civil Statutes of Texas, 1925; Section 6, Chapter 313, Acts of the Forty-first Legislature, Regular Session;<sup>1</sup> Sections 4 and 6, Chapter 26, Acts of the Forty-second Legislature, First Called Session;<sup>2</sup> Section 14, Chapter 2, Acts of the Forty-second Legislature, Fourth Called Session;<sup>3</sup> and Section 1, Chapter 64, Acts of the Forty-third Legislature, Third Called Session,<sup>4</sup> are hereby repealed. All other laws and parts of laws in conflict or inconsistent with any of the provisions of this Act are hereby repealed. No violation committed and no liability, penalty or forfeiture, incurred prior to the time when any Statute, or part thereof, repealed or altered by the provisions of this Act, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such violations, liabilities, penalties and forfeitures, shall be instituted and proceeded with in all respects as if such prior Statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the provisions of this Act, the procedure had after this Act shall have taken effect in such prosecution or suit shall be, as far as is practicable, in accordance with the provisions of this Act. The amendment, repeal or expiration of a rule, regulation or order of the

Commission, made or promulgated under the provisions of this Act, or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, shall not have the effect of releasing or discharging any person violating said rule, regulation or order prior to the effective date of such amendment, repeal, or expiration from any liability, penalty or forfeiture incurred prior to such effective date; but prosecutions and suits for such violations, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such rule, regulation or order had not been amended, or repealed, or had not expired.

<sup>1</sup> Article 6036b.  
<sup>2</sup> Article 6049c, §§ 4, 6.  
<sup>3</sup> Article 6049d, § 14.  
<sup>4</sup> Article 6049c, § 14.

Acts Saved From Repeal

Sec. 18. Nothing in this Act shall be construed to repeal Chapter 36, Acts of the Forty-first Legislature, Fifth Called Session, known as the "Common Purchaser Act," and the amendments thereto,<sup>1</sup> except as specifically repealed hereby or inconsistent herewith; and this Act shall not be construed to repeal or modify Chapter 97, Acts of the Forty-third Legislature, Regular Session, known as the "Marginal Well Act."<sup>2</sup>

<sup>1</sup> Article 6049a.  
<sup>2</sup> Article 6049b.

Anti-Trust Laws Unaffected

Sec. 19. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change or modify the anti-trust and/or monopoly Statutes of this State, and that no provision of this Act shall in any manner directly or indirectly authorize a violation of such anti-trust and/or monopoly Statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of any other sections of this Act, it is the legislative intent that no provision of this Act shall in any manner affect, alter, diminish or amend any provision of the anti-trust and/or monopoly Statutes of this State, or in any manner authorize a violation of such anti-trust and/or monopoly Statutes; and it is further especially provided that if any provision of this Act shall be so construed by any Court of this State as to in any manner affect, alter, diminish, or modify any provision of the anti-trust and/or monopoly Statutes of this State, then in that event any such section, sub-section, sentence, or clause or any provision of this Act so construed as conflicting with said monopoly and/or anti-trust Statutes, is hereby declared null and void rather than the anti-trust and/or monopoly Statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of any other section or sections of this Act, regardless of any statement therein to the contrary.

Effective Period

Sec. 20. Repealed by Acts 1941, 47th Leg., p. 907, ch. 559, § 1.

Partial Invalidity

Sec. 21. If any section, portion, clause or part of this Act be invalid or unconstitutional, the same shall not affect any remaining parts of this Act and it is expressly hereby declared that the Legislature would have passed such remaining parts of this Act with such invalid or unconstitutional section, portion, clause or part omitted.

[Acts 1935, 44th Leg., p. 180, ch. 76; Acts 1941, 47th Leg., p. 907, ch. 559, § 1.]

**Art. 6049f. Forging Name of Agent, Officer or Employee of Railroad Commission to Permit or Tender Relating to Crude Petroleum Oil or Natural Gas**

Sec. 1. Whoever shall forge the name of any agent, officer or employee of the Railroad Commission of Texas to a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either, or who shall forge the name of any person to such tender or permit, or who shall knowingly use such forged instrument to induce another to handle or transport any crude petroleum oil or natural gas or any product or by-product of either, shall be confined in the penitentiary not less than two (2) nor more than five (5) years.

Sec. 2. Whoever shall knowingly procure or cause any agent, officer or employee of the Railroad Commission of Texas to approve or issue a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either containing any statement or representation which is false and which materially misrepresents the true facts with respect to such crude petroleum oil or natural gas or any product or by-product of either, or who shall procure or cause any agent, officer or employee of the Railroad Commission of Texas to issue to him a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either with the intent to defraud shall be confined in the penitentiary not less than two (2) nor more than five (5) years.

Sec. 3. Whoever shall knowingly have in his possession a forged tender or permit of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either for the purpose of transporting, handling or the sale of said crude petroleum oil or natural gas or any by-product of either, shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars (\$25) nor more than One Thousand Dollars (\$1000), or by confinement in the county jail for not less than thirty (30) days nor more than one year; or by both such fine and jail sentence.

Sec. 4. If any section, subsection, clause, sentence or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this

Act and each section, subsection, clause, sentence or phrase thereof irrespective of the fact that any one or more of the sections, subsections, clauses, sentences or phrases be declared unconstitutional.

[Acts 1935, 44th Leg., p. 536, ch. 225.]

**Art. 6049g. Prohibiting Certain Practices in Oil and Gas Production; Measurement and Recording**

Definitions

Sec. 1. The term "person" as used in this Act shall be construed to mean and include a person and persons, firm and firms, association and associations, corporation and corporations, and the agents, servants, employees and representatives thereof.

By "Governmental Agent" or "Governmental Agency" as used in this Act shall be meant the Railroad Commission of Texas and any other administrative governmental board, and Governmental Agent to which the Legislature of the State of Texas has heretofore or may hereafter delegate the duty of supervising the production of oil and gas within the State of Texas.

The term "oil property" as used herein shall be construed to include any well producing either oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated or controlled as a producing unit by the same person in the same locality and any leasehold estate to the extent that it is owned, operated and controlled by the same person.

Measuring Oil or Gas Sold; Record

Sec. 2. It shall be unlawful for any person owning, leasing, operating or controlling any oil property within the State of Texas to permit the oil or gas so produced to pass beyond the possession or control of such person into the possession or control of any other person without first accurately measuring the amount of such oil or such gas, and making and preserving an accurate record thereof.

Preventing Accurate Measurement

Sec. 3. It shall be unlawful for any such person mentioned in Section 2 of this Act to use any method or device to evade the accurate measurement provided for in Section 2 hereof, and it shall be unlawful for any such person to use any method or device to prevent obtaining an accurate measurement of such production.

Sale From Tanks Under Control of Producer

Sec. 4. It shall be unlawful for any such person mentioned in Section 2 of this Act to permit oil produced by him in this State to pass out of his possession or control into the possession or control of any other person, except from tank or tanks under the control of such person producing said oil.

Inspection of Properties and Records

Sec. 5. The Governmental Agency of the State of Texas shall at all times have access to the oil property of all persons for inspection and examination and to the records of all such

persons for inspection, examination and audit, and it shall be unlawful for any person to refuse to permit such Governmental Agency or any agent, servant, representative or employee thereof to have access to such oil property for inspection and examination; or for any person to interfere with such inspection and examination; or to remove, tamper with, mutilate or destroy any device, seal or meter on said property placed thereon or used in such inspection and examination.

#### Refusing to Permit Inspection of Records

Sec. 5a. It shall be unlawful for any person to refuse to permit such Governmental Agency or any agent, servant, representative or employee thereof, access, for inspection, examination and audit to the books, documents and records pertaining to, used in connection with, or required to be used in connection with, such oil properties.

#### Preventing Inspection of Property by Enclosure or Equipment

Sec. 5b. It shall be unlawful for any such person mentioned in Section 2 hereof so to equip or enclose his oil property, or any part thereof, in such manner as to prevent such inspection and examination, or so to equip or enclose such property in any manner as to prevent such an inspection and examination from revealing the true facts with respect to the amount of oil or oil and gas being produced from such oil property, or the manner in which such oil property is being operated or the manner and method by which the production from such oil property is produced or stored or delivered from the possession or control of such person.

#### Posting Sign With Names of Owner and Operator, Stating Acreage, Etc.

Sec. 6. Every oil property within this State shall at all times be posted with a sign written in the English Language, which sign shall state the name of the owner of said property, the operator of said property, the number of acres contained in said property and the name by which such property is commonly known and identified. Each tank, owned or controlled by such person and to which such property is connected, shall be similarly identified by a sign containing the same information, and each flare to which such property is connected shall be likewise similarly identified. All lettering on all of such signs shall be not less than one inch in height.

#### Flares

Sec. 7. Whenever the gas from any well producing both oil and gas is not trapped and utilized and where such gas is capable of being burned in a flare, it shall be unlawful for any person mentioned in Section 2 of this Act to produce oil from said well at any time without simultaneously continuously burning a flare to consume all gas that would otherwise be permitted to escape into the open air.

#### Limit on Daily Production

Sec. 7a. It shall be unlawful for any person, as defined in this Act, owning, leasing, operating, producing, or controlling any oil property or oil well within this State to produce or cause to be produced on any day from any such oil property or oil well any oil in excess of the amount allowed to be produced per day from any such oil property or oil well under any order or orders of the Governmental Agency, theretofore promulgated and in force at the time.

#### Bribing Officers

Sec. 7b. It shall be unlawful for any person to corruptly give, offer or promise to give any member of the Governmental Agency, Chief Supervisor, Deputy Supervisor, or any agent or employee thereof, any gift or gratuity with intent to influence any such officer or person in his acts or conduct with respect to:

(a) Enforcing any provision of the law applicable to oil and gas in force at the time within the State of Texas;

(b) Enforcing any order, rule, or regulation of the Governmental Agency made under the power and authority given to it;

(c) Or the discharge of any duty by any such officer or person imposed upon him by the oil and gas laws, orders, rules and regulations duly promulgated and in force at such time with the State of Texas.

#### Rules and Regulations

Sec. 8. The Governmental Agency is hereby authorized to adopt and promulgate, in the manner provided by law for the adoption of rules and regulations of the Railroad Commission, rules and regulations:

(a) To provide for the method of measuring oil and gas produced from any well within this State and to provide for the type of measuring devices to be used in obtaining such measurement;

(b) For the inspection of all oil properties to ascertain that the prescribed measuring devices are installed and are in accurate working condition and are being accurately used;

(c) That no oil or gas is being permitted to leave the possession of the producer thereof without first being accurately measured and an accurate record thereof made and preserved;

(d) That no oil is being produced from any well producing both oil and gas without burning a flare or flares where the installation and use of a flare or flares is required by the terms of this Act;

(e) For the keeping of complete and accurate records correctly reflecting the amount of oil and gas or oil or gas produced from each oil property each calendar day, and the disposition and method of disposition of all such oil and gas so produced, and for the filing monthly with said

Governmental Agency of monthly reports accurately reflecting the true facts with respect to all such matters;

(f) For the inspection and examination by such Governmental Agency, its agents, servants and employees of all such oil properties, and for the inspection and examination of the records hereinbefore provided for.

#### Publication of New Rules and Regulations

Sec. 8a. Whenever the Governmental Agency shall have adopted any rule or regulation under the power conferred by this Act, such Governmental Agency shall publish in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Governmental Agency), once each day for three (3) consecutive days a complete copy of such rule and regulation and on and after the 7th calendar day after the date of the last publication, such rule, regulation or order shall become effective and enforceable. Notice of any amendment, repeal, alteration or modification of such order may be similarly promulgated and will become similarly effective after similar notice.

#### Certificate of Adoption and Publication of Rule Prima Facie Evidence

Sec. 8b. A certificate under the seal of the Governmental Agency executed by any member of such Governmental Agency, setting forth the terms of any rule, order or regulation and that it has been adopted, promulgated and published and was in effect at any date specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any cause involving such order, rule or regulation and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

#### Form of Records

Sec. 8c. The rules, regulations and orders of said Governmental Agency with respect to records and reports shall prescribe the form in which the same shall be made and kept, but said records and reports shall contain the data and information as provided for in this Act.

#### Penalty

Sec. 9. Any person who shall violate any of the provisions of Section 5, 5a or 5b of this Act, or any person who shall fail to comply with any of the provisions of said Sections of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. Any person who shall violate any other of the provisions of this Act, or any person who shall fail to comply with either of the other terms of this Act, or any person who shall fail to comply with the terms of any rule, regulation or order adopted and promulgated by the Governmental Agency under the terms of this Act, or any person who

shall violate either of the rules, regulations or orders of such Governmental Agency adopted under the provisions of this Act, shall upon conviction be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for a term of not less than two (2) nor more than four (4) years.

The President of each corporation, the chief managing executive of each association, all active members of each firm and partnership, and all trustees of each trust subject to the provisions of this Act shall be responsible for the compliance with the terms of this Act by the corporation, association, firm, partnership or trust of which he is, respectively, president, chief managing executive, member or trustee, and such responsible person shall be liable to prosecution under and subject to the criminal penalties provided by this Act for all violations hereof by the respective corporation, association, firm, partnership or trust of which he has actual knowledge or to which he assents.

#### Jurisdiction

Sec. 10. For all prosecutions for violations of either of the terms of this Act, jurisdiction is hereby conferred upon the Courts of the county in which the oil property or any part thereof is situated and with respect to which a violation of either of the terms of this Act is charged.

#### Persons Authorized to Serve Process, Citation, Notice, Subpoena, or Writ

Sec. 10a. In all suits or actions involving the enforcement of the conservation laws of this State or of the orders of the Railroad Commission affecting the conservation of the natural resources of this State, all Texas Rangers and all agents of the Railroad Commission of Texas shall have the power and authority to serve any civil or judicial process, citation, notice, warrant, subpoena or writ (including process of every character in contempt proceedings) just the same and as fully so as any sheriff or constable of a county to whom the process, writ, notice, citation, subpoena or warrant might be directed could within the limits of his own county. Such Rangers and such agents of the Commission may serve such process anywhere within the State of Texas although it may be directed to "any sheriff or constable" of a particular county. They shall make the same return as any other officer, sign their name and add thereunder (in the case of a State Ranger) the title of "State Ranger" and (in the case of an agent of the Commission) the words, "Agent, Railroad Commission of Texas," which shall be sufficient to make it valid if the writ is otherwise properly made out. No fees of any kind shall be allowed such State Rangers or agents of the Railroad Commission, other than their regular salary or compensation.

#### Provisions Cumulative

Sec. 11. The provisions of this Act shall be cumulative of all other provisions of the Civil

Statutes, the Penal Code and the Code of Criminal Procedure, and the remedies herein provided shall be cumulative of all other remedies provided in the Civil Statutes, the Penal Code and the Code of Criminal Procedure.

**Partial Unconstitutionality**

Sec. 12. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any clause, sentence or part of this Act shall be declared unconstitutional shall in no event affect any other clause, sentence or part hereof.

**Emergency Clause**

Sec. 13. The fact that the laws of this State are now inadequate to provide for an accurate check of the amount of oil and gas being produced within this State, and the fact that a great many landowners of this State are being defrauded of their proper royalty interest in oil and gas being produced, and the fact that by reason of the inadequacy of existing laws, the State of Texas is being defrauded of a vast amount of revenue being derived under the gross production tax laws of the State of Texas, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days be suspended, and the same is hereby suspended, and it is so enacted.

[Acts 1933, 43rd Leg., p. 422, ch. 165; Acts 1934, 43rd Leg., 2nd C.S., p. 102, ch. 44, § 1.]

**NATURAL GAS**

**Art. 6050. Classification**

The term "gas utility" and "public utility" or "utility," as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired; or may hereafter be acquired by the exercise of the right

of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

4. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricultural activities shall not be construed within the terms of this law as constituting any person, association, corporation, trustee, receiver or partnership as a "gas utility," "public utility," or "utility" as hereinabove defined so as to make such person, association, corporation, trustee, receiver or partnership subject to the jurisdiction, control and regulation of the Commission as a gas utility.

4a. The natural gas made available under the provisions of this Act shall be used exclusively for pumping water for farm and other agricultural purposes in order for the person, firm, association, or corporation furnishing such natural gas to be exempt from the provisions of said Article 6050 of the Revised Civil Statutes of Texas of 1925. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided.

[Acts 1925, S.B. 84; Acts 1954, 53rd Leg., 1st C.S., p. 70, ch. 31, § 1.]

**Art. 6051. May Enjoin Gas Pipe Line**

The operation of gas pipe lines for buying, selling, transporting, producing or otherwise

dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy.

[Acts 1925, S.B. 84.]

#### Art. 6052. Utility Office

Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe.

[Acts 1925, S.B. 84.]

#### Art. 6052a. Repealed by Acts 1959, 56th Leg., p. 844, ch. 382, § 31

#### Art. 6053. Regulation of Utilities

##### Rates; Rules and Regulations

Sec. 1. The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings, pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioner's precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on.

5 West's Tex. Stats. & Codes—12

##### Malodorants, Investigation and Regulation

Sec. 2. In addition to the duties and powers of the Commission hereinabove set forth, it is empowered and it shall be its duty to investigate the use of malodorants by persons, firms, or corporations engaged in the business of handling, storing, selling, or distributing natural and liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses, or supplying the same by pipe lines or otherwise, to any public building or buildings, or to the general public, and the Commission is empowered to require such persons, firms, or corporations to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphragms in gas equipment, the method of its use and containers and equipment to be used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas.

Secs. 3 to 19. Repealed by Acts 1959, 56th Leg., p. 844, ch. 382, § 31.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 501, § 1; Acts 1959, 56th Leg., p. 844, ch. 382, § 31.]

#### Art. 6053-1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards

(A) For the purpose of providing state control over safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under the federal Natural Gas Pipeline Safety Act of 1968,<sup>1</sup> the Railroad Commission of Texas is hereby expressly granted the power to describe or adopt by regulation safety standards for all such transportation of gas and gas pipeline facilities which are not subject to exclusive federal control, to require record maintenance and reports and to inspect records and facilities to determine compliance with such safety standards, and, from time to time, to make certifications and reports and to take any other requisite action in accordance with Section 5(a) of the Natural Gas Pipeline Safety Act of 1968.

(B) All terms employed in this Article which are defined in the Natural Gas Pipeline Safety Act of 1968 shall have the definition prescribed therein.

(C) The Attorney General is authorized, on behalf of the Railroad Commission, to enforce said safety standards by injunction restraining violations thereof (including the restraint of transportation of gas or the operation of a pipeline facility). Any violation of such safety standards shall further be subject to a civil penalty, payable to the State of Texas, in an amount not to exceed \$1,000 for each such violation for each day that such violation persists,

except that the maximum civil penalty shall not exceed \$200,000 for any related series of violations. Any such civil penalty may be compromised by the Attorney General in consideration of the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of violation.

(D) Nothing in this Article shall be construed to reduce, limit or impair any power heretofore vested by law in any incorporated city, town or village.

[Acts 1969, 61st Leg., p. 199, ch. 80, § 1, eff. April 17, 1969.]

1 49 U.S.C.A. § 1671 et seq.

#### Art. 6054. Orders, etc., Reviewed

All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected.

[Acts 1925, S.B. 84.]

#### Art. 6055. To Refund Excess Charges

If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint.

[Acts 1925, S.B. 84.]

#### Art. 6056. Operator's Reports

The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent.

[Acts 1925, S.B. 84.]

#### Art. 6057. Discrimination

No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine.

[Acts 1925, S.B. 84.]

#### Art. 6057a. Discrimination

No pipe line public utility, as such utility is defined in the laws of this State governing the production and delivery of natural gas, shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Railroad Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes or to prescribe rates and regulations for service from or to other or different places, as it may determine.

[1925 P.C.]

#### Art. 6057b. Penalty for Violation of Law

Any owner, officer, director, agent or employé of any person, firm or corporation owning, operating or controlling gas pipe lines of such utility mentioned in the preceding article, who shall wilfully violate any provision of the statutes of this State governing such utility, including the preceding article, shall be fined not less than fifty nor more than one thousand dollars, and may in addition thereto be imprisoned in jail not less than ten days nor more than six months.

[1925 P.C.]

#### Art. 6058. Appeal From City Control

When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing compa-

ny or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6059. Appeal From Orders

If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

[Acts 1925, S.B. 84.]

#### Art. 6060. Utility Tax

Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income,

received from all business done by it within this State during said quarter.

[Acts 1925, S.B. 84.]

#### Art. 6061. Report to Governor

The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.
2. The receipts of gross income taxes from all sources, indicating the sources.
3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with statement of traveling and other expenses incurred by each of said persons and approved by the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6062. Penalties

Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved.

[Acts 1925, S.B. 84.]

#### Art. 6063. Receiver

Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law.

[Acts 1925, S.B. 84.]

**Art. 6064. Duties of Pipe Line Expert**

The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe.

[Acts 1925, S.B. 84.]

**Art. 6065. Employees of Commission**

The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix.

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 634, ch. 288, § 1.]

**Art. 6066. Expenditures**

The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by/or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the Gas Utilities Division Fund provided for by Article 6060, as amended by House Bill No. 547, Acts at the Regular Session of the 42nd Legislature, by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire amount derived from the tax imposed by Article 6060, as amended, shall be used for the purpose of enforcing the provisions of the preceding Article 6050, et seq., and for the purpose of paying for the administration of the conservation laws of this state relating to the production of gas, which includes condensates and distillates, such amounts as are required for this purpose shall be periodically transferred to the special Oil and Gas Enforcement Fund, but not in excess of the amount actually used in the administration of gas conservation regulation. Any surplus remaining in the Gas Utilities Fund (or any surplus remaining in the Oil and Gas Fund in part as a result of such transfer from the Gas Utilities Fund) shall be paid to the General Revenue Fund on September 1 of each year.

[Acts 1931, 42nd Leg., p. 319, ch. 190, § 1; Acts 1959, 56th Leg., p. 633, ch. 287, § 1; Acts 1961, 57th Leg., p. 567, ch. 265, § 1.]

**Art. 6066a. Regulation of Transportation of Oil or Products Thereof****Definitions**

Sec. 1. (a) The word "Commission" shall mean the Railroad Commission of Texas. The phrase "order of the Commission" shall include any rule, regulation or order adopted by the Railroad Commission of Texas pursuant to the oil and gas conservation statutes of this State, including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

(b) The word "oil" or phrase "crude oil" herein used shall include crude petroleum oil in its natural state as produced and crude petroleum oil from which only the basic sediment and water have been removed. The word "gas" herein used shall include natural gas, bradenhead gas, casinghead gas, and gas produced from an oil or gas well.

(c) The word "product" shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and/or any and all liquid products or by-products derived from crude petroleum oil or gas, whether hereinabove enumerated or not.

(d) "Unlawful oil," as that term is used herein shall include oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission, and oil which has been produced within said state in violation of any law of said state or in violation of any order of the Commission, and shall include any oil transported in violation of any such law or in violation of any such order. When any oil has been retained in storage for a period of more than six (6) years without being used, consumed or moved into the regular channels of commerce, it shall be presumed that such oil is "unlawful oil." This presumption shall be rebutted by proof that such oil: (1) was produced from a well or wells within the production allowable then applying to such well or wells; and (2) was not produced in violation of any law of the State of Texas or order of the Commission; and (3) if transported from the lease from which it was produced, that such transportation was not in violation of any law of the State of Texas or order of the Commission.

(e) "Unlawful product" shall be construed to include any product any part of which was processed or derived in whole or in part from unlawful oil or from any product of unlawful oil, or from unlawful gas, or which is transported in violation of any order of the Commission or in violation of any law of Texas.

(f) "Unlawful gas" shall be construed to include gas produced or transported in violation

of any order of the Commission or so produced or transported in violation of any law of Texas

(g) The word "tender" shall mean a permit or certificate of clearance for the transportation of oil or products approved and issued or registered under the authority of the Commission.

The form of any tender and the application therefor shall be prescribed by order of the Commission and shall show the name and address of the shipper or person tendering oil or products for transportation, name and address of the transporting agency (where such order requires the transporter to be designated), quantity and true classification of each commodity authorized to be transported, place or places where delivery will be made to the transporting agency, and such other related data as may be prescribed by order of the Commission. A tender shall bear a date and serial number, shall show its expiration date, and shall be executed by the agent or agents authorized by the Commission to deny, approve or register tenders. No tender shall be approved or registered by such agent authorizing the shipment or transportation of any unlawful oil or unlawful product.

(h) The word "manifest" shall be construed to include any document issued by a shipper covering oil or products to be transported by truck or other motor vehicle.

The form of a manifest may be prescribed by order of the Commission, and shall bear a certificate signed by the shipper stating the amount of oil or products and each of them to be transported. A manifest shall show, when required by order of the Commission, the date and serial number of the tender, if a tender is required, authorizing such transportation, or any seal or number or other evidence of such tender, the amount and classification of each such product to be transported, the name and address of the transporting agency, name and address of shipper, name and address of consignee, if known, the name and address of the driver or operator of such truck or vehicle; the number on the license plate on such truck or vehicle; the day, hour and place where such truck or vehicle was loaded and the destination, if known, of such load, and such other related data as may be required by order of the Commission. If the form of manifest is not prescribed by order of the Commission, each shipper required to issue a manifest to a transporter shall utilize the form of manifest commonly used in commercial transactions or the form of manifest required by any State agency or Department of this State to accompany the movement of gasoline.

(i) The word "person" shall include natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, or representative of any kind.

(j) The phrase "shipping papers" shall be construed to include bills of lading covering oil or products transported by railway, manifest covering oil or products transported by truck

or motor vehicle, and any written document covering oil or products transported by pipe line, boat or barge. The phrase "delivery ticket" shall be construed to include any expense bill or written document covering oil or products delivered.

#### Transportation; Regulations

Sec. 2. (a) Whenever, by order of the Commission, a tender is required before oil or products may be transported, and whenever pursuant to such order, an agent of the Commission approves and issues or registers a tender authorizing the transportation of oil or products by trucks or motor vehicles, it shall be the duty of the person obtaining such tender to sign and issue a manifest to the operator of each such truck or motor vehicle, which manifest shall show the date and serial number of the tender authorizing such transportation; a separate manifest shall be issued for each load carried by such truck or motor vehicle. The person obtaining such tender shall not transport or deliver or cause or permit to be transported or delivered any more nor any different commodity than is authorized by such tender. Each transporter authorized to transport oil or products on a manifest issued by a shipper shall not receive for transportation any different commodity than is described in such manifest and shall not receive oil or products in excess of the amount authorized by such manifest. The person authorized to transport oil or products by a manifest issued by a shipper, which manifest bears on its face the date and serial number of such tender, may rely upon the manifest delivered to him, and each consignee or person to whom oil or a product covered by such manifest is delivered by such transporter may rely upon such manifest as authority for receiving the commodity delivered, provided such manifest appears to be valid on its face, is signed by the shipper, and bears the certificate of the shipper that the transportation of such oil or products is authorized by the tender the date and serial number of which is shown on such manifest.

(b) Whenever, pursuant to any order of the Commission, the transportation of oil or products by truck or motor vehicle is prohibited without a manifest showing the date and serial number of a tender authorizing such transportation, it shall be unlawful for any person to transport by truck or motor vehicle any oil or products without having or carrying in such truck or vehicle at all times between the point of origin and point of destination of such shipment a manifest bearing the date and serial number of the tender authorizing such transportation; and it shall be unlawful for any person to ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without furnishing the operator of such truck or motor vehicle a manifest bearing the date and serial number of such tender, authorizing such shipment or transportation; provided, if the person to whom such tender is issued is the operator of such truck or motor vehicle and such tender

identifies the truck or motor vehicle by license number and covers one load, such tender in lieu of a manifest may be carried in said truck or vehicle. Products shipped or transported in violation of this Section shall be deemed to be unlawful products. Oil shipped or transported in violation of this Section shall be deemed to be unlawful oil.

(c) It shall be the duty of every person who transports any oil or products by truck or motor vehicle, under conditions that require a tender or manifest as herein provided, to secure from each person to whom any part of such oil or products is delivered a receipt upon the reverse side of said tender or manifest, which receipt shall contain the number of gallons of oil and of each product delivered, the date of delivery and the signature and address of the purchaser or consignee of said oil or products. It shall be the duty of every person who transports any oil or products by truck or motor vehicle and makes deliveries thereof to keep in this State for a period of two (2) years every such tender or manifest issued to him, together with the receipts and endorsements thereon. Such tenders or manifests shall at all times be subject to the inspection of the Commission, its agents and inspectors.

#### Arrests for Unlawful Transportation

Sec. 3. In order to enforce the provisions of this Act every agent of the Commission, highway patrolman, sheriff, constable and all peace officers of this State are empowered to stop any motor vehicle which may appear to be transporting oil or products, for the purpose of taking samples of the cargo and inspecting the shipping papers of such motor vehicle, provided such agent or officer shall have probable cause and reasonable grounds to believe that such vehicle is transporting any unlawful oil or unlawful products. If upon examination of such motor vehicle it is found that the same is transporting any unlawful oil or unlawful product, or is transporting any oil or product without authority of a tender required by order of the Commission, such authorized agent or officer shall, with or without warrant, arrest the driver thereof and carry him before the nearest Justice of the Peace and file a complaint under this Act against such driver. In any criminal action involving the provisions of this Act, no fee shall be allowed any such agent, patrolman, sheriff, constable or other officer for executing any warrant of arrest or *capias* or for making any arrest with or without a warrant.

#### Fines or Penalties

Sec. 4. (a) Every person who transports by truck or motor vehicle, oil or products, who shall wilfully and knowingly fail to stop such truck or vehicle, when commanded to do so by any agent of the Commission or by any authorized officer or who shall wilfully fail to permit inspection by such agent or officer of the contents of or the shipping papers accompanying such truck or vehicle, shall be punished by

a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

(b) Every person who shall knowingly violate any provision of Section two (2) of this Act, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle over any public highway, in this State any unlawful oil or unlawful product, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive from any truck or motor vehicle or knowingly deliver to any truck or motor vehicle any oil or product not covered by a tender authorizing the transportation thereof whenever a tender is required by any order of the Commission, shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

(c) Whenever by order of the Commission a tender is required before oil or products may be transported or received for transportation by pipe line, railroad, boat or barge, and whenever pursuant to such order an authorized agent of the Commission approves or registers and issues to an initial transporter by pipe line, railroad, boat or barge a tender covering oil or products, such initial transporter may deliver to any connecting carrier or consignee the amount of oil or products covered by such tender, but shall not transport or deliver any more nor any different commodity than is authorized by such tender. Whenever such order provides that connecting carriers or consignees may rely upon the shipping papers executed by such initial transporter as authority to transport or receive the oil or products covered by such shipping papers provided such shipping papers show the date and serial number of the tender issued to the initial transporter, each such connecting carrier receiving oil or products from another transporter by pipe line, railroad, boat or barge, and each consignee receiving oil or products by pipe line, railroad, boat or barge under authority of shipping papers bearing the date and serial number of a tender issued to an initial transporter shall be deemed to be receiving such oil or products by authority of a tender under the provisions of this Act.

(d) Every person who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, railroad, boat or barge any unlawful product or unlawful oil, or who shall knowingly receive or deliver for transportation by pipe line, rail, boat or barge any unlawful product or unlawful oil, or who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive or deliver by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commis-

sion, shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

Promulgation of Regulations Prior to Enforcement,  
Except as to Civil Actions

Sec. 5. Whenever the Commission shall have adopted, after notice and hearing as provided under other statutes of the State, any rule, regulation or order pursuant to any statute of this State, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commission shall have promulgated such rule, regulation or order by publishing a complete copy of same in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Commission) once each day for three (3) consecutive days, and on and after the seventh (7th) day after the date of the last publication such rule, regulation or order shall be effective and enforceable in any criminal action, brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provisions of any amendment or modification of any order of the Commission until the Commission shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended or modified rule, regulation or order in three (3) newspapers of general circulation once each day for three (3) consecutive days, and, on and after the seventh (7th) calendar day of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act. However, the absence of promulgation by publication as herein provided shall not affect the enforcement of any order of the Commission in any civil or quasi civil action brought pursuant to this Act or to any statute of this State.

Certificate of Promulgation as Prima Facie Evidence

Sec. 6. A certificate under the seal of the Commission executed by any member or the Secretary thereof, setting forth the terms of any order of the Commission and that it has been adopted, promulgated and published and was in effect at any date or during any period specified in such certificate shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

State Rangers Authorized to Serve Process

Sec. 7. In all prosecutions, criminal actions, cases, proceedings or suits involving the enforcement of the provisions of this Act or of any order of the Commission all State Rangers and all agents of the Commission shall have the power and authority to serve any criminal or judicial process, warrant, subpoena or writ just the same and as fully as any sheriff, con-

stable or peace officer is authorized under existing laws when so directed by the court issuing such process. Such rangers and such agents of the Commission may serve such process, warrant and subpoena anywhere within the State of Texas although it may be directed to any sheriff or constable of a particular county. They shall make the same return as any other officer, sign their name and add thereunder the title of (in the case of a State Ranger), "State Ranger," and (in the case of an agent of the Commission) the words "Agent, Railroad Commission of Texas," which shall be sufficient to make it valid if the writ is otherwise properly made out. No fees of any kind for such services shall be allowed such State Rangers or agents of the Railroad Commission other than their regular salary or compensation.

Pleading, Proof and Venue

Sec. 8. (a) In any complaint, information or indictment alleging a violation of an order of the Commission, it shall not be necessary to set forth fully the terms of such order, and it shall be sufficient therein to allege the substance of the order, or the pertinent term or terms thereof alleged to have been violated.

(b) In any criminal action filed pursuant to this Act, a certificate executed by any member of the Commission or by the Secretary thereof showing the amount of allowable oil which may be produced per day or during a stated period from any oil well or wells, proof of any production from which is involved in such criminal action, shall be admissible in evidence and shall be prima facie evidence of the facts therein stated.

(c) The venue of a criminal action maintained pursuant to this Act is hereby fixed in the county where the oil or products involved in such criminal action is received or delivered, or in any county in or through which such oil or product is transported.

(d) Nothing herein shall restrict or limit the power of the Commission to adopt rules, regulations or orders pursuant to the oil and gas conservation statutes of this State including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

Review of Rejection of Tender

Sec. 9. Whenever an application for a tender is rejected by an authorized agent of the Commission, it shall be the duty of such agent to return one copy of such application to the applicant endorsing thereon all the reasons for such rejection. Such applicant whose tender may be rejected shall have the right to appeal from any action of such agent by filing a petition in the District Court of Travis County, Texas, against the Commission, for a review of the ruling of such agent. The Court hearing such petition shall have the power to sustain, modify or overrule any action of such agent relative to a tender application and to issue such restraining orders or injunctions as the

facts may warrant. It shall be the duty of the Clerk of the Court wherein such petition is filed to issue to the Commission a notice setting forth briefly the cause of action stated in such petition. But the Court shall not enter any order on any such petition until after a hearing thereon to be heard not less than five (5) days from the issuance of such notice. Any person whose application for tender is not acted on within twenty (20) days from the date of its filing shall have the right of appeal in the same manner above provided for appealing from a rejection of a tender application. Any person dissatisfied with the decision of the District Court may appeal to the Court of Civil Appeals.

**Forfeiture of Unlawful Products; Suit by  
Attorney General; Notice; Hearing  
and Determination; Fees**

Sec. 10. (a) All unlawful oil and unlawful products, regardless of the date of production or manufacture thereof, are hereby declared to be a nuisance and shall be forfeited to the State as hereinafter provided. It shall be the duty of the Commission, its servants, agents, and employees, highway patrolmen, sheriffs, constables, and peace officers, upon the discovery of any unlawful oil or unlawful products, to file immediately with the Attorney General of Texas, a report giving a description of such unlawful oil and/or unlawful products, including the ownership, party in possession, the amount, the location and classification thereof.

(b) When the Attorney General is advised from any source of the presence and existence of unlawful oil and/or unlawful products it shall be his duty to institute a suit in rem against such unlawful oil and/or unlawful product and against all persons owning, claiming or in possession thereof, such suit to be brought in the name of the State of Texas in any court of competent jurisdiction in Travis County or in the county in which such oil or product is located. If it shall appear to the court from an examination of the petition or after hearing evidence thereon at a preliminary hearing that unlawful oil and/or unlawful products mentioned in the petition are in danger of being removed, wasted, lost or destroyed, the court is authorized and required, in term time or in vacation, to issue restraining orders or injunctive relief, either mandatory or prohibitive, or to appoint a receiver to take charge of the oil or product in question, or to direct the sheriff of the county in which the unlawful oil or unlawful products are located to seize and impound the same until further orders of the court.

(c) Notice of pendency of such suit shall be served in the manner prescribed by law; either party to said suit may demand a trial by jury on any issue of fact raised by the pleadings and the case shall proceed to trial as other civil cases. If, upon the trial of such suit the oil or product in controversy is found to be unlawful oil or unlawful products, then the court trying said cause shall render judgment forfeiting the same to the State of Texas and au-

thorizing the issuance of an order of sale directed to the sheriff or any constable of the county where the oil or products are located commanding such officer to seize and sell said property in the same manner as personal property is sold under execution. The court may order the oil or products sold in whole or in part as may be deemed proper and the sale shall be conducted at the court house door of the county where the oil and/or products are located and shall conform in all respects to the sale of personal property as aforesaid. The money realized from the sale of any such unlawful oil and/or products shall be applied, first, to the payment of the costs of suit and expenses incident to the sale of such oil and/or products, then the court may allow compensation to any person for expenses incurred in the storage of such unlawful oil and/or products; provided that in no event shall such compensation exceed one-half of the money received from the sale of the unlawful oil and/or products, and after such expenses have been approved and allowed by the court trying the case, all funds then remaining, shall be remitted forthwith to the State Treasurer and shall be by the Treasurer placed to the credit of the General Revenue Fund of the State of Texas.

(d) The officers of said Court shall receive the same fees provided by law for other civil actions. Provided further that the Sheriff executing said sale shall issue a bill of sale or certificate to the purchaser of said oil and/or products and the Commission shall, upon the presentation of said certificate of clearance, issue a tender, if a tender is required, permitting the purchaser of said oil and/or products to move the same into commerce.

**Provisions Cumulative**

Sec. 11. The provisions of this Act shall be cumulative of all other provisions of the Civil Statutes, the Penal Code and the Code of Criminal Procedure, and the remedies herein provided shall be cumulative of all other remedies provided in the Civil Statutes, the Penal Code and the Code of Criminal Procedure.

**Partial Invalidity**

Sec. 12. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof.

**Exception as to Retail Purchases**

Sec. 13. The provisions of this Act shall not apply to the retail purchase of the products of petroleum where such products so purchased at retail are contained in the ordinary equipment of a motor vehicle and are used only for the operation of such motor vehicle in which contained.

[Acts 1935, 44th Leg., p. 624, ch. 246; Acts 1965, 59th Leg., p. 1528, ch. 667, §§ 1, 2.]

**Art. 6066b. Standard Gas Measurement Law****Short Title**

Sec. 1. This Act shall be known and may be cited as the "Standard Gas Measurement Law."

**Cubic Foot of Gas Defined**

Sec. 2. The term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

**Determination of Variable Factors; Use of Findings and Field Rules**

Sec. 4a. It shall be the duty of the Railroad Commission of Texas and said Commission is hereby authorized, empowered and directed to determine the average temperature of gas, as produced in each oil and gas field in Texas, and to determine the other variable factors necessary to calculate the metered volumes in accordance with the Ideal Gas Laws and the variable factors to correct for deviation from the Ideal Gas Laws in each of the oil and gas fields in the State of Texas. Upon request of any interested party the Railroad Commission of Texas shall give notice and hold a public hearing before making such determinations. Promptly upon such determinations the Railroad Commission of Texas shall make and publish such findings and promulgate such reasonable field rules as may be necessary to effectuate the provisions of this Act.

Any person, association of persons, or corporation shall be permitted to use the findings and field rules of the Commission for all purposes under this Act, but if such findings or field rules are not so used in determining volumes under this Act, the volumes so otherwise determined shall be corrected to the basis of the "standard cubic foot of gas" as defined in Section 2 of this Act.

**Reporting Volumes of Gas**

Sec. 4b. Any person required to report volumes of gas under the laws of this State as amended by Sections 3 and 4 hereof,<sup>1</sup> shall report such volumes in number of standard cubic feet calculated and determined under the provisions of this Act.

<sup>1</sup> Articles 6008, § 2(k), and former 7047b, § 2(12). See, now, Taxation-General, art. 3.04.

**Conformity to Standard Cubic Foot; Existing Contracts; Violations of Act**

Sec. 5. Each and every sale, and each and every purchase, delivery and receipt of gas by volume hereafter made in this State, by, for or on behalf of an oil and gas lease owner, royalty owner thereunder, or other mineral interest owner, shall be made and such gas shall be measured, calculated, purchased, delivered and

accounted for on the basis of "a standard cubic foot of gas" as defined in Section 2, and as determined under this Act. Whenever the provisions of this Act operate to change the basis of measurement provided for in existing contracts, then the price for gas, including royalty gas, provided for in such contracts shall, if either the purchaser or seller so desires, be adjusted to compensate for the change in the method of measuring the volume of gas delivered thereunder. This provision is intended to protect parties to contracts now in existence, so that after this Act becomes effective the total amount of money paid for a volume of gas purchased, or required to be accounted for, under existing contracts shall remain unaffected by this Act.

If the foregoing provisions of this Section 5, or any part thereof, shall be held by the courts to be unconstitutional or invalid then and in that event the remaining portions of this Act shall become ineffective and inoperative.

Nothing in this Section shall affect or apply to purchases or sales made on any basis other than a volume basis.

Any person, association of persons, or corporation who, as purchaser thereof, shall knowingly fail or refuse to so measure, calculate or account for any such gas so purchased, shall be subject to a penalty of not less than Ten Dollars (\$10) nor more than Five Hundred Dollars (\$500) for each offense recoverable in the name of the State in any District Court in Travis County, Texas, and each day of such violation shall constitute a separate offense. But it shall be a defense to any claim for such penalty that the Railroad Commission of Texas has not made and published the findings provided for in Section 4a, as to the particular field in question.

Nothing herein shall prevent an aggrieved party from maintaining a civil suit for damages in the county or counties in which the gas is produced.

**Partial Invalidity**

Sec. 6. Subject to the provisions in Section 5 hereof, if any part, Section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the Courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have been enacted, and does here now enact, such remaining portions despite any such invalidity.

[Acts 1949, 51st Leg., p. 945, ch. 519.]

Section 2 of this Act amends art. 6008, § 2(k) and section 3 of former art. 7047b, § 2(12). See, now, Taxation-General, art. 3.04.

**Art. 6066c. Cooperative Facilities for Conservation and Utilization of Gas**

Sec. 1. The Railroad Commission of Texas (hereinafter called "Commission") may approve agreements, by persons owning or controlling leases or other interests in separate properties in oil fields, gas fields or oil and

gas fields, for the construction and operation of cooperative facilities necessary for the conservation and utilization of gas, including facilities for extracting and separating hydrocarbons from natural gas or casinghead gas.

Such agreements shall only be approved by the Commission after application, notice and hearing and a finding by the Commission that such cooperative facilities are in the interest of conservation and that secondary recovery operations are not feasible or necessary.

No agreement for the construction or operation of such cooperative facilities shall provide directly or indirectly for the cooperative refining of crude petroleum, distillate, condensate or gas or any by-product of crude petroleum, distillate, condensate or gas. The extraction of liquid hydrocarbons from gas and the separation of such liquid hydrocarbons into butanes, propanes, ethanes, distillate, condensate and natural gasoline without any additional processing of any of them shall not be considered to be refining. No such agreement shall provide for the cooperative marketing of crude petroleum, condensate, distillate or gas or any by-products thereof.

No provision of this Act shall be construed as requiring the approval of the Commission of voluntary agreements for the joint development and operation of jointly owned properties.

Nothing herein shall restrict any of the rights which persons now may have to make and enter into contracts for the construction and operation of cooperative facilities as herein provided.

The approval of any such agreement shall not of itself be construed as a finding that similar operations in other fields are wasteful or not in the interest of conservation.

Sec. 2. Agreements, and operations thereunder, in accordance with this Act, being necessary to prevent waste and conserve the natural resources of this State, shall not be construed to be in violation of the provisions of Title 126, Revised Civil Statutes, 1925, as amended, nor Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, known as the Anti-Trust Acts. However, if any court shall find any conflict between this Act and Title 126, Revised Civil Statutes of Texas, 1925, as amended, or Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, then this Act is intended as a reasonable exception thereto necessary for the above stated public interest; provided further, that if any court should find that a conflict exists between this and the above mentioned laws and this Act is not a reasonable exception thereto, then it is the intent of the Legislature that this Act, or any conflicting portion hereof, shall be declared invalid, rather than declaring the above mentioned anti-trust laws, or any portion thereof, invalid.

Sec. 3. It is hereby declared to be the legislative intent to enact each provision of this Act separately; and should any section, phrase or part of this Act be declared unconstitutional

or, for any reason, invalid, such invalidity shall not affect any other remaining portion, provision or section.

[Acts 1953, 53rd Leg., p. 407, ch. 117.]

#### Art. 6066d. Liquefied Petroleum Gas Code

##### Short Title of Act

Sec. 1. This Act shall be known and may be cited as "The Liquefied Petroleum Gas Code" or "LPG Code."

##### Definitions

Sec. 2. A. General Construction. All words, terms and phrases used or appearing in this Act shall have and be given their usual and ordinary meaning.

B. Construction of Particular Words, Terms and Phrases. Notwithstanding anything to the contrary, however, the following words, terms and phrases shall have and be given the following definitions for the purposes of this Act:

(1) Liquefied Petroleum Gases. The term "liquefied petroleum gases" or "LPG" is used herein and shall be construed to mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures thereof: propane, propylene, butane (normal butane or isobutane) and butylenes.

(2) Container. The word "container" is used herein and shall be construed to mean and include any receptacle in which LPG is transported, delivered or stored or in which LPG is injected for utilization or consumption by or through an LPG system.

(3) Appliance. The word "appliance" is used herein and shall be construed to mean any apparatus or fixture which utilizes or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(4) LPG System. The word "system" or "LPG system" is used herein and shall be construed to mean and include all piping, fittings and valves, exclusive of containers and appliances, which connect one or more containers to one or more appliances which utilize or consume LPG.

(5) Commission. The word "Commission" is used herein and shall be construed to mean the Railroad Commission of the State of Texas.

(6) Person. The word "person" is used herein and shall be construed to mean and include individuals, partnerships, firms, corporations, unincorporated associations, or any other business entity.

(7) Employees. The word "employee" is used herein and shall be construed to mean any individual who renders or performs any services or labor for another person, as hereinabove defined, for compensation and shall include individuals hired on a part time or temporary basis, as well as individuals hired on a full time or permanent basis.

Legislative Grant of Authority to the Railroad Commission of Texas

Sec. 3. A. General. The Railroad Commission of Texas is hereby authorized, empowered, and directed, and it shall be its duty to promulgate and adopt, in accordance with this Act, adequate rules, regulations, and/or standards pertaining to any and all aspects or phases of the LPG industry (except as provided in Subsection D. of this Section) which will protect or tend to protect the health, welfare, and safety of the general public.

B. Containers, Tanks, Appliances, Systems and Equipment. The Railroad Commission of Texas is hereby authorized to adopt by reference the published Codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and/or any other nationally recognized society, either in whole or in part, as the standards to be complied with in the design, construction, fabrication, assembly, installation, use and maintenance of containers, tanks, appliances, systems and equipment for the transportation, storage, delivery, utilization and/or consumption of LPG. Containers used in accordance with and subject to the regulations of the Interstate Commerce Commission and containers which are owned or used by the Government of the United States of America are excepted from the provisions of this Section.

C. Trucks, Trailers, or Other Motor Vehicles. The Railroad Commission of Texas shall, pursuant to the aforesaid authority and mandate, prescribe rules, regulations and/or standards with regard to trucks, trailers, or other motor vehicles on which containers, tanks or vessels are mounted or situated with facilities for dispensing LPG requiring all rigid pipes and valves thereon to be recessed or otherwise protected by heavy guard rails to afford maximum protection against damage thereto in the event of an accident, and such other further rules, regulations and/or standards pertaining to trucks, trailers or other motor vehicles used or to be used in the transportation, delivery or distribution of LPG as it might deem proper or advisable.

D. Exception. None of the provisions of this Act, shall be applicable to the production, refining, or manufacturing of LPG or to the storage, sale, or transportation by pipeline or railroad tank car of LPG by any pipeline company, producer, refiner, or manufacturer, or to equipment used by any pipeline company, producer, refiner or manufacturer in any such producing, refining or manufacturing process or in such storage, sale or transportation by pipeline or railroad tank car, or to any deliveries of LPG to another person at the place of production, refining, or manufacturing.

Creating the Liquefied Petroleum Gas Division of the Railroad Commission and Providing for the Appointment of a Director

Sec. 4. There is hereby created and organized, a separate and distinct Division of the Railroad Commission of Texas to be known as

the Liquefied Petroleum Gas Division of the Railroad Commission of Texas, also referred to in this Act as the LPG Division, which shall be charged with the duty and responsibility of administering and enforcing the Laws of the State of Texas and the rules, regulations and/or standards promulgated and adopted by the Railroad Commission of Texas which pertain to liquefied petroleum gas. The Railroad Commission of Texas shall appoint and employ a Director of such Division who serves at the pleasure of said Commission and who shall devote his full time and attention in administering the provisions of this Act. Sufficient employees shall be provided for the enforcement of this Act.

License

Sec. 5. No person, firm, corporation or association shall engage in this state in the manufacturing, and/or assembling, and/or repairing, and/or selling, and/or installing of containers; nor shall any person, firm, corporation or association engage in the laying or connecting of pipes or piping, including all types of fittings, either in connecting with or to liquefied petroleum gas systems, or with or to house service lines or house pipes, nor in any manner lay or connect pipes or piping, including all types of fittings, to serve a system or appliances, to be used with liquefied petroleum gas as a fuel; nor shall such persons, firms, corporations or associations engage in the service, installation and/or repair of appliances using or to be used in connection with systems using liquefied petroleum gas as a fuel, nor shall such persons, firms, corporations or associations engage in the sale, transportation, dispensing or storage of liquefied petroleum gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the Railroad Commission of Texas under the provisions of this Act, a license to do so, except where the LPG so handled is in quantities of less than one (1) gallon United States water capacity and is an integral part of a device for its utilization or where such person is not engaged in business as a dealer in LPG specifically set out in Section 6 hereof.

Categories and Fees of Dealers

Sec. 6. A prospective dealer in Liquefied Petroleum Gas may make application to the Liquefied Petroleum Gas Division as provided in Section 9 of this Act, for a license to engage in any or all of the following categories of dealers, and the following first year and renewal license fees are hereby fixed and assessed for each such category:

(1) Manufacturers or Fabricators. The manufacture, fabrication, assembly and/or sale of Liquefied Petroleum Gas containers, tanks, and/or equipment. The application and first year license fee shall be Five Hundred Dollars (\$500.00). Thereafter the annual renewal license fee shall be Three Hundred Dollars (\$300.00) per annum.

(2) Limited Installers or Repairmen. The installation, service and/or repair of cooking and space heating appliances, excluding water heaters, floor furnaces and central heating units, and excluding the installation of Liquefied Petroleum Gas systems of equipment other than an appliance connector approved by the Liquefied Petroleum Gas Division. The application and first year license fee shall be Fifty Dollars (\$50.00). Thereafter the annual renewal license fee shall be Twenty-five Dollars (\$25.00) per annum.

(3) Wholesalers or Jobbers. Any person who is not a producer or refiner who sells Liquefied Petroleum Gas to transporters, industrial consumers, processors, distributors and/or retail dealers. The application and first year license fee shall be Five Hundred Dollars (\$500.00). Thereafter the annual renewal license fee shall be One Hundred Fifty Dollars (\$150.00) per annum.

(4) Carriers. The transportation only of Liquefied Petroleum Gas by carriers for hire or contract. The application and first year license fee shall be Five Hundred Dollars (\$500.00). Thereafter the annual renewal license fee shall be One Hundred Fifty Dollars (\$150.00) per annum.

(5) General Installers and Repairmen. The sale, service, installation, and/or repair of containers, tanks, systems, piping, and equipment which utilize Liquefied Petroleum Gas, and the service, installation, and/or repair of appliances which utilize Liquefied Petroleum Gas. The application and first year license fee shall be Fifty Dollars (\$50.00). Thereafter the annual renewal license fee shall be Thirty-five Dollars (\$35.00) per annum.

(6) Retail and Wholesale Dealers. The transportation, storage, sale, distribution, and/or delivery of Liquefied Petroleum Gas at retail or wholesale, including the sale, service, installation and/or repair of Liquefied Petroleum Gas containers, tanks, piping, and/or equipment, and further including the service, installation, and/or repair of Liquefied Petroleum Gas appliances. The application and first year license fee shall be Five Hundred Dollars (\$500.00). Thereafter the annual renewal license fee shall be One Hundred Fifty Dollars (\$150.00) per annum.

(7) Carburetors. The installation, service and/or repair of Liquefied Petroleum Gas motor fuel carburetion systems and equipment. The application and first year license fee shall be Fifty Dollars (\$50.00). Thereafter the annual renewal license fee shall be Twenty-five Dollars (\$25.00) per annum.

(8) Bottle Exchanges. The operation of an Interstate Commerce Commission bottle, filling and/or container exchange including the buying and selling, but not the delivery,

pickup or other transportation, of Interstate Commerce Commission bottles or containers. The application and first year license fee shall be One Hundred Dollars (\$100.00). Thereafter the annual renewal license fee shall be Fifty Dollars (\$50.00) per annum.

(9) Service Station. The operation of a Liquefied Petroleum Gas motor fuel service station only. The application and first year license fee shall be Fifty Dollars (\$50.00). Thereafter the annual renewal license fee shall be Twenty-five Dollars (\$25.00) per annum.

(10) Municipal Corporations. The operation of a Liquefied Petroleum Gas system through mains, meters or pipes by any incorporated city, village or town. The application and first year license fee shall be One Hundred Fifty Dollars (\$150.00). Thereafter the annual renewal license fee shall be One Hundred Fifty Dollars (\$150.00) per annum.

(11) Bottle Dealers. The transportation, delivery, and pickup of Interstate Commerce Commission bottles and/or containers. The application and first year license fee shall be Five Hundred Dollars (\$500.00). Thereafter the annual renewal license fee shall be One Hundred Fifty Dollars (\$150.00) per annum.

(12) Bottle Installers. The installation and/or connection of Interstate Commerce Commission bottles and/or containers. The application and first year license fee shall be One Hundred Dollars (\$100.00). Thereafter the annual renewal license fee shall be Fifty Dollars (\$50.00) per annum.

#### Limitation of Authority of Dealers

Sec. 7. No dealer in Liquefied Petroleum Gas authorized under any one or more of the categories thereof set forth in Section 6 of this Act shall do or perform any of the activities set forth in another category thereof for which he is not authorized without qualifying therefor. In the event a dealer in Liquefied Petroleum Gas shall elect and qualify for license under more than one category in Section 6, he shall pay the required application and first year license fee and the subsequent renewal license fees for each such category; provided, however, no dealer, other than one qualifying under category (1) shall be required to pay renewal license fees totaling more than One Hundred Fifty Dollars (\$150.00) per annum regardless of the number of categories for which he is licensed; and no dealer licensed under category (1), "Manufacturers and Fabricators," shall be required to pay renewal license fees totaling more than Three Hundred Dollars (\$300.00) per annum, regardless of the number of categories for which he is licensed.

#### Requirement of Qualified Employees and Bulk Storage

Sec. 8. A. No person shall hereafter be granted or issued a license under any of the categories of Section 6 of this Act, as an authorized dealer in LPG, nor shall any existing

or present license as an authorized dealer in LPG be renewed hereafter, unless such person employs only qualified employees in accordance with the provisions of Section 10 of this Act.

**Application and Hearings for License as Dealer in LPG**

Sec. 9. A. Applications. All applications for a license as a dealer in Liquefied Petroleum Gas shall be submitted to the Liquefied Petroleum Gas Division on printed forms furnished by the Liquefied Petroleum Gas Division and shall contain such pertinent information as the Liquefied<sup>1</sup> Gas Division shall require. The application and first year license fee, as provided in Section 6 of this Act, together with proof of satisfactory completion of any required examinations shall accompany each original application.

B. Hearings. The Commission shall cause to be held quarterly public hearings on the second Monday in the months of January, April, July and October of each and every year hereafter on all such applications; or upon such other occasions as the Commission may, in compliance herewith, deem necessary. Provided further, that in the event that the second Monday should fall on a holiday, such hearings shall be held on the first weekday immediately next following such holiday.

(1) Notice. Notice of each such hearing setting forth the name, address, business location and the name or style of each such applicant and the category or categories applied for under Section 6 of this Act shall be posted in a conspicuous place in the Office of Director of the Liquefied Petroleum Gas Division in Travis County, Texas, at least thirty (30) days prior to the date of such hearing.

(2) Nature of the Hearing. For each category under Section 6 of this Act, the Commission shall cause to be prepared an examination, to be based upon the recognized standard codes and practices promulgated by the Railroad Commission of the State of Texas, affecting such category, such as will require an applicant, or in case the applicant is a partnership, firm, corporation, unincorporated association, or any other business entity, or in the case the applicant is not actively engaged in Liquefied Petroleum Gas operations, the individual who is or shall be directly responsible for and actively supervising the operations of the dealership at each such outlet or location, in order to become a dealer in such category to make good and sufficient proof that he can and will meet the safety requirements provided in this Act, and by the rules and regulations of the Railroad Commission insofar as the same apply to such category.

(3) Order. If upon a public hearing so held, such an applicant should be found to be qualified to receive a license as a dealer in Liquefied Petroleum Gas for one or more of the categories applied for, the Com-

mission shall then cause to be entered an order to that effect upon its records noting the category or categories for which applicant has been found to be qualified or in the event applicant failed to qualify said fact shall be entered in a like manner.

(4) Examination Fees. Each applicant shall pay to the Commission in advance an examination fee for each required examination, which shall not be refundable, as follows:

(a) For categories 3 and 4 in Section 6:	\$25.00
(b) For category 6 in Section 6:	50.00
(c) For all other categories in Section 6 for which an examination is required:	5.00

(5) First Year License. A license shall be issued by the Commission to said applicant in the name under or by which he conducts or proposes to conduct his business as such a dealer. Such license shall run to the dealership to or in connection with which it was issued and it shall confer no rights or privileges separate and apart from such dealership.

(6) Renewal License. Each license as an authorized dealer in Liquefied Petroleum Gas shall be renewable upon the timely payment or tender of the renewal license fee established and assessed therefor, and by furnishing the Commission with a bond as required in Section 23 of this Act, a certificate of insurance evidencing that the insurance required in Section 24 of this Act is in full force and effect, and such other information and data as may reasonably be required by the Commission.

C. Special Requirements for Retail and Wholesale Dealers. In the event any person shall make application for license as a Retail and Wholesale Dealer under the provisions of Category 6 of Section 6 of this Act, the Commission, in addition to other requirements herein, shall cause to be conducted an actual inspection of the facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant, to verify satisfactory compliance with all current safety laws, regulations and practices. Such inspection shall be performed within 30 days following receipt by the Commission of the application and proof of compliance with the examination and other requirements herein.

<sup>1</sup> Word "Petroleum" should be inserted.

**Qualified Employees**

Sec. 10. A. Examination. After the effective date of this Act, no dealer in LPG shall employ any person as a service, and/or installation man or any person as a delivery or transport truck driver unless such person shall have submitted to and passed an examination as prescribed by the Commission to determine his competency to safely perform the duties re-

quired of him in handling or dealing with LPG in the capacity in which he is to be employed; provided, however, a trainee employee shall be exempt from such examination for a period of forty-five (45) days, and until examined by a representative of the Commission. Any LPG dealer employing any such trainee employee shall, within forty-five (45) days of the commencement of such employment, notify the Commission of such employment so that an examination may be scheduled. Such examination shall be made in the field, and if the employee passes the examination such fact shall be reported to the LPG Division and noted in its records.

B. Present Employees. Notwithstanding anything herein to the contrary, however, any person who is employed by a LPG dealer on the effective date of this Act shall be presumed to be a qualified employee until examined by a representative of the Railroad Commission in the same manner as prescribed in Section 10A hereof. If such employee shall fail to pass said examination, such employee shall nevertheless continue as a qualified employee for an additional period of thirty (30) days and shall be entitled to one reexamination during said period. If such employee fails to pass this second examination, such employee shall no longer be a qualified employee and such employee may not be employed by any LPG dealer in such work unless and until such employee shall pass a subsequent examination.

#### Registration of Trucks

Sec. 11. A. Transport Trucks, Transport Trailers and Delivery Trucks. Each transport truck, transport trailer or other motor vehicle equipped with a Liquefied Petroleum Gas cargo tank and each truck used principally for transporting or delivering Liquefied Petroleum Gas in portable containers shall be required to be registered hereunder.

B. Registration Forms and Annual Fees. Forms for the registration of such trucks or motor vehicles shall be furnished by the Commission and shall contain such information as the Commission shall require. The registration fee for such trucks or motor vehicles shall be Twenty Dollars (\$20.00) per truck or motor vehicle per annum.

C. Motor Carrier Laws and Department of Public Safety. Nothing contained in this Act shall be construed to alter, modify, amend or revoke all or part of the Motor Carrier Laws of this State, and the Department of Public Safety of the State of Texas shall cooperate with the Commission in the administration and enforcement of this Act and the rules, regulations and/or standards promulgated thereunder insofar as same apply to motor vehicles.

#### Fees

Sec. 12. All renewal registration and license fees established and assessed under this Act shall be payable by the fifteenth day of each September of each and every year hereafter. Application, first year examination, and

other nonrecurring fees shall be payable in full in advance.

#### Proration

Sec. 13. Repealed by Acts 1971, 62nd Leg., p. 1714, ch. 494, § 6, eff. Sept. 1, 1971.

#### Disposition of Funds and Fees; Funds Available for Expenses

Sec. 14. All funds held or controlled and all fees received from licenses issued under this Act by the Railroad Commission of Texas for the Liquefied Petroleum Gas Division and all funds thereafter received by the Railroad Commission under the provisions hereof, shall be deposited in the State Treasury, as received, to the credit of the Liquefied Petroleum Gas Division and expended in accordance with appropriations made by Law. The funds realized from fees shall be applied first to the payment of the necessary expenses of the Liquefied Petroleum Gas Division in enforcing and administering the provisions of this Act. The members of said Railroad Commission shall look alone to the revenue derived from the operation of this Law, appropriated by the Legislature, for expenses of conducting the Liquefied Petroleum Gas Division and administering this Act.

#### Suspension or Revocation

Sec. 15. The Commission is hereby authorized and empowered to suspend, or revoke any license, registration or permit granted pursuant to this Act, if it should appear upon a public hearing that the holder of said license, registration or permit has violated or failed to comply with, or is violating or failing to comply with any of the provisions of this Act, or any of the rules, regulations, standards and specifications prescribed, promulgated or adopted by the Railroad Commission pursuant to this Act.

#### Public Hearings

Sec. 16. The Commission is hereby authorized and empowered, and it shall be its duty to cause to be notified any person in writing of any acts, omissions or conduct on his part which the Commission considers to be in violation of or not in compliance with any provision or provisions of this Act, or any rules, regulations and/or standards promulgated and adopted pursuant thereto. Said complaint shall specify the particular acts, omissions or conduct complained of and shall designate a date by which time same must be corrected or discontinued. If said person has not corrected or discontinued the acts, omissions or conduct complained of on or before the designated date, the Commission shall cause to be held a public hearing not less than ten (10) days (exclusive of the day of mailing), after notice of such hearing has been forwarded by registered or certified mail to such person. Said notice shall designate the date, time and place for such hearing.

#### Investigation, Witnesses, Books, Records and Documents

Sec. 17. The Commission shall have the power to conduct any investigations related to

the subject matter of the hearing, to summon and compel the attendance at such hearing of any witnesses, to require the production of books, records and documents related to the subject matter of any investigation or hearing and to provide for the taking of depositions of witnesses and the use of interrogatories and admissions as set forth in the Texas Rules of Civil Procedure.

#### Right to be Heard

Sec. 18. Any person against whom a complaint has been filed shall be notified of the filing of such complaint as above set forth, and any such person shall have the right to appear at such hearing, file an answer to such complaint, introduce evidence, and be heard either in person or by counsel, or both.

#### Findings and Judgment

Sec. 19. At the conclusion of any such public hearing, the Commission shall cause to be entered its findings and judgment in writing which shall be filed in a permanent public record book maintained by the LPG Division. A copy thereof shall be furnished to the person charged in such complaint. If the Commission shall find that the party charged in such complaint has violated or failed to comply with, or is violating or failing to comply with any of the provisions of this Act, and/or any of the rules, regulations and/or standards promulgated and adopted pursuant to this Act, the Commission may suspend the license or registration involved for a definite period, not in excess of ninety (90) days, or may revoke same.

#### Action for Reinstatement

Sec. 20. Any person who has had a license or registration suspended or revoked, may file an action in the district court of the county or district wherein he resides or maintains his principal place of business for the reinstatement of such license or registration within thirty (30) days from the date the Commission rendered its order suspending or revoking same, and not thereafter. Such appeal to the district court shall be by way of a trial de novo, and such trial on appeal shall be the same as if such action had been originally filed in said court. If any person who has had a license or registration suspended or revoked should within ten (10) days after receipt of notice of such suspension or revocation, give written notice to the Commission of his intention to appeal from the order of the Commission, the action of the Commission suspending or revoking said license or registration shall be stayed for a period of thirty (30) days from and after the expiration of said ten (10) day period; provided, however, that if no action for reinstatement of the license or registration suspended or revoked is filed by such person within this period, the order of the Commission suspending or revoking same shall become final. If such an action for reinstatement is timely filed, the order of the Commission suspending or revoking such license or registra-

tion shall continue to be stayed until said action shall have been heard and disposed of by the district court.

#### Procedure Upon Refusal or Denial of License

Sec. 21. The same procedure as set forth above for suspension or revocation of a license or registration shall be applicable to the refusal or denial of the Commission to grant a person a license as a dealer in LPG after proper application therefor.

#### Injunctions

Sec. 22. Whenever it shall appear to the Commission, either upon complaint or otherwise, that any person holding a license or registration hereunder is engaged in or is about to engage in any acts which are in violation of or not in compliance with the provisions of this Act, the Attorney General, on request by the Commission, and in addition to any other remedies provided herein, may bring action in the name and in behalf of the State of Texas against such person to enjoin him from commencing or continuing to engage in any such acts. The district court of any county, wherein it is shown that all or any part of said acts have been or are about to be committed, shall have jurisdiction of any action brought under this Section, and this provision shall be superior to any other statutory provision fixing the jurisdiction or venue of suits for injunction. No bond for injunction shall be required of the Commission or Attorney General in any such proceeding.

#### Surety Bond

Sec. 23. No person shall be issued a license as an authorized dealer in LPG under any of the categories of Section 6 of this Act nor shall any such existing license be continued or renewed hereafter unless such person shall furnish the Commission with a surety bond in the face amount of Two Thousand Dollars (\$2,000) with a bonding company authorized to do business in this State. All such bonds shall contain a provision that the obligor thereon will indemnify and pay to the State of Texas, to the extent of the face amount thereof, all judgments which may be recovered in the name of the State of Texas against such person during the term of such bond and proximately caused by such person's violation of or failure to comply with this Act and the rules, regulations, and/or standards promulgated and adopted thereunder.

#### Insurance

Sec. 24. No person shall be issued a license as an authorized dealer in Liquefied Petroleum Gas under any of the categories of Section 6 of this Act nor shall any such existing license be continued or renewed hereafter unless such person shall take out and maintain, so long as he continues in business as such a dealer, with a reliable insurance carrier qualified to do business in this State, the following kinds and amounts of insurance policies to guarantee

payment of damages proximately resulting from the negligent acts of such person while engaged in any of the activities hereinafter set forth:

A. Automobile bodily injury and property damage insurance coverages on each and every motor vehicle, including trailers and semitrailers, used in the transportation of Liquefied Petroleum Gas, in an amount to be fixed by the Commission under such reasonable rules and regulations as it may prescribe; provided the minimum amount of such coverages shall not be less than the amounts required as proof of financial responsibility under the provisions of the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes).

B. Manufacturers and Contractors liability policy in an amount to be fixed by the Commission under such reasonable rules and regulations as it may prescribe.

C. Workmen's compensation or employer's liability coverage.

#### Penalties

Sec. 25. In addition to and supplemental of injunctive relief and other penalties herein provided, any violation or failure to comply with this Act, and the rules, regulations and/or standards promulgated and adopted pursuant thereto shall constitute a misdemeanor and shall be punishable in any court of competent jurisdiction by a fine of not less than Five Dollars (\$5) and not more than Two Hundred Dollars (\$200) and provided further, that each day such violation or failure to comply continues shall constitute and be punishable as a separate offense.

#### Entry for Inspection

Sec. 26. Any inspector, employee or agent of the Commission is hereby authorized to enter at any reasonable time onto premises of a licensee hereunder for the purpose of inspection of any container, tank, apparatus, system or equipment in which LPG is stored or by or through which LPG is utilized or consumed.

#### Warning Tag

Sec. 27. Any such inspector, employee or agent is hereby authorized to declare as unsafe or dangerous any such container, tank, apparatus, system or equipment which does not conform to the safety requirements of this Act, or any rules, regulations and/or specifications adopted or promulgated hereinunder, or is otherwise defective, and to cause a warning tag to be conspicuously attached thereto.

#### Supply LPG to Such Containers, Tanks, Apparatus, Systems or Other Equipment

Sec. 28. It shall constitute a misdemeanor for any person to hereafter knowingly sell, furnish, deliver or supply LPG for storage in or utilization or consumption by or through any such container, tank, apparatus, system or equipment to which such a warning tag has been attached. Said misdemeanor shall be punishable in any court of competent jurisdiction by a fine of not less than Fifty Dollars (\$50) and not more than Five Hundred Dollars (\$500).

#### Penalty for Unauthorized Removal of Tag

Sec. 29. It shall constitute a misdemeanor for any unauthorized person to remove, destroy or in any way obliterate any such warning tag attached to any such tank, apparatus, system or equipment. Said misdemeanor shall be punishable in any court of competent jurisdiction by a fine of not less than Fifty Dollars (\$50) and not more than Five Hundred Dollars (\$500).

#### Repeal of Conflicting Laws; Saving Clause as to Pending Proceedings

Sec. 31. That Subsections 3 through 19 of Section 1 of Senate Bill No. 269, Acts, 1945, Forty-ninth Legislature, page 629, Chapter 358, as amended by Senate Bill No. 256, Acts, 1949, Fifty-first Legislature, page 411, Chapter 220, as further amended by Senate Bill No. 143, Acts, 1951, Fifty-second Legislature, page 612, Chapter 363, also known as Articles 6053 and 6052a of the Revised Civil Statutes of Texas, as well as all laws or parts of laws in conflict with this Act in so far as the same are in conflict, be and the same are hereby repealed; provided, however, that all permits, licenses, orders, rules, regulations and specifications issued pursuant to said laws prior to the effective date of this Act shall be valid for the period for which they were issued unless sooner revoked by the Commission for any cause for which the Commission is authorized by this Act to revoke hereunder; provided further, that all prosecutions and legal or other proceedings begun, and any violation of the law whether prosecution or administrative action is commenced or not, and any cause of action of civil or criminal nature existing under the provisions of that law now in effect, shall continue in effect and remain in full force and effect until terminated as under the terms of the law now in force, notwithstanding the passage of this Act.

[Acts 1959, 56th Leg., p. 844, ch. 382; Acts 1961, 57th Leg., p. 579, ch. 273, § 1; Acts 1961, 57th Leg., p. 587, ch. 279, § 1; Acts 1969, 61st Leg., p. 1334, ch. 408, § 1; Acts 1971, 62nd Leg., p. 1710, ch. 494, §§ 1 to 7, eff. Sept. 1, 1971.]

# TITLE 103

## PARKS

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## 1. STATE PARKS BOARD

## Abolition and Transfer of Powers

*The State Parks Board was abolished and its powers, duties and authority were transferred to the Parks and Wildlife Department by Acts 1963, 58th Leg., p. 104, ch. 58, § 4. See Penal Auxiliary Laws, art. 978f-3a.*

Art. 6067. Creating Board<sup>1</sup>

There is hereby created a State Parks Board<sup>1</sup> of six members to be appointed by the Governor, whose terms shall be six (6) years from date of appointment, but in appointing the first Board he shall appoint two (2) members for two (2) years, two (2) members for four (4) years, and two (2) members for six (6) years. They shall serve without compensation, but shall be reimbursed for necessary traveling expenses and hotel bills out of State funds, except where localities pay such expenses.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 687, ch. 345, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

## Art. 6067a. State Parks and Historical Parks; Exceptions

Sec. 1. All State parks and all historical parks now designated as State parks or historical parks, which specifically includes Goliad State Park, Gonzales State Park, Kings State Park, Governor James Stephen Hogg Memorial Shrine, Lipantitlan State Park, Washington State Park, Acton Park, and Monument Hill State Park, now under the control and custody of the State Board of Control, except the San Jacinto State Park, the San Jacinto Memorial Tower and the Battleship Texas, and Fannin State Park, which shall continue to remain under the supervision and control of the State Board of Control, subject to the provisions of Articles 6071, 6072, and 6073, Revised Civil Statutes of Texas;<sup>1</sup> Senate Concurrent Resolution No. 18, Acts of 1941, Forty-seventh Legislature, Regular Session;<sup>2</sup> and House Concurrent Resolution No. 83, Acts of 1947, Fiftieth Legislature, Regular Session,<sup>3</sup> shall be and are hereby placed under the control and custody of the State Parks Board<sup>4</sup> under the authority conferred upon such Board by Article 6067 of the Revised Civil Statutes of Texas, as amended by Section 1, Chapter 345, of the Acts of the Forty-fifth Legislature, Regular Session of 1937; Article 6068 of the Revised Civil Statutes of Texas, as amended by Section 1, Chapter 174 of the Acts of the Forty-fifth Legislature, Regular Session of 1937, and as later amended by the Acts of the Forty-sixth Legislature, Regular Session of 1939, page 516; Article 6069 of the Revised Civil Statutes of Texas, as amended by Section 1, Chapter 175, of the Acts of the Forty-fifth Legislature, Regular Session of 1937; and other Statutes specifically setting out and defining the rights, powers and duties of the State Parks Board.

Sec. 2. All laws which are in conflict, in whole or in part, which specifically includes Articles 677, 6074, 6075, 6076, 6077, 6077a, and 6077i are hereby repealed. Articles 6071, 6072, and 6073, Revised Civil Statutes of Texas; Senate Concurrent Resolution No. 18, Acts of 1941, Forty-seventh Legislature, Regular Session; and House Concurrent Resolution No. 83, Acts of 1947, Fiftieth Legislature, Regular Session, are not intended to be affected by this

Act. All appropriations heretofore made either in or by reference to the historical State parks are hereby in all things ratified and confirmed in behalf of the Texas State Parks Board.

[Acts 1949, 51st Leg., p. 320, ch. 153.]

<sup>1</sup> Repealed. See art. 6071b, § 2.

<sup>2</sup> Laws 1941, page 1430.

<sup>3</sup> Laws 1947, page 1150.

<sup>4</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

**Art. 6067b. Health and Safety Rules and Regulations; Notice; Enforcement; Penalties; Disposition of Revenue**

Sec. 1. The Parks and Wildlife Commission is hereby authorized to promulgate reasonable rules and regulations governing the health, safety and protection of persons and property within State parks, historic sites, scientific areas, or forts administered by the Parks and Wildlife Department, as may hereafter be necessary. Said rules and regulations may be promulgated to govern the conservation, preservation and use of State property whether natural features or constructed facilities; the abusive, disruptive or destructive conduct of persons; the activities of park users including camping, swimming, boating, fishing or other recreational activities; the disposal of garbage, sewage or refuse; the possession of pets or animals; the regulation of traffic and parking; and the conduct of individuals which endangers the health or safety of park users or their property.

Sec. 2. Before the Commission may adopt a rule or regulation as authorized by this Act, it must:

(1) Publish notice in at least three newspapers having general circulation in this State of its intention to adopt the rule or regulation; provided further, that if said rule or regulation specifically applies to one park only, said notice shall be published on two consecutive weeks in the county where said park is located and at least one week prior to the date of the hearing hereafter authorized;

(2) Said notice shall state the time and place of a public hearing on the proposed rule or regulation, contain a statement of such rule or regulation, and state that interested persons may obtain additional copies of the proposed rule or regulation from the Department prior to the hearing;

(3) a. More than one week, but less than three weeks after the notice is published, a hearing shall be conducted at the time and place stated in the notice at which time all interested persons shall be allowed to express their views on the proposed rule or regulation.

b. Provided further, that all specific or general rules or regulations which apply to a State park, historic site, scientific area or fort shall be posted in a conspicuous place at each such park, site or fort and a copy of said rules and regulations shall

be made available to persons using said parks, upon request.

c. The Commission may, if it so chooses, in a rule or regulation adopted under the procedures established by this Act, provide for the following penalties:

1. For a first conviction, a fine not to exceed \$25.00;

2. For a second conviction for violation of the same rule or regulation by the same individual during a six-month period, a fine not to exceed \$50.00;

3. For a third or subsequent conviction of the violation of the same rule or regulation by the same individual during a one-year period, a fine not to exceed \$200.00.

d. In addition, any person causing, contributing to, or directly or indirectly responsible for disruptive, destructive or violent conduct which endangers the health, safety or lives of persons, animals or property may be removed from a park, historic site, scientific area or fort for a period no greater than forty-eight (48) hours, except that such person may be enjoined from reentry for a longer period for cause shown by a court of competent jurisdiction. Any person, before removal, shall be placed on notice of the provisions of this section and given an opportunity to correct such conduct as described herein.

Sec. 3. This Act may be enforced by any duly constituted peace officer of this State, including but not limited to the duly appointed employees of the Texas Parks and Wildlife Department designated as peace officers by authority of Article 978f-5c Penal Code of Texas, 1965. A citation may be issued by such officer for violation of a regulation on such form as may be promulgated by the Parks and Wildlife Commission.

Sec. 4. All revenue collected from fines imposed upon violators of regulations duly promulgated by authority of this Act shall be transmitted and deposited to the credit of the State Parks Fund established by Chapter 168, Acts of the 42nd Legislature, Regular Session, 1931, as amended by Chapter 431, Acts of the 47th Legislature, Regular Session, 1941.<sup>1</sup>

Sec. 5. No rule or regulation promulgated by the Parks and Wildlife Commission under the authority of this Act shall have the effect of, or be construed so as to repeal or amend any penal statute in existence at the effective date of this Act or which may hereafter be passed or amended by the Legislature.

[Acts 1971, 62nd Leg., p. 1403, ch. 383, eff. May 26, 1971.]

<sup>1</sup> Article 6070a.

Section 6 of the 1971 act provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect to within the invalid provisions or application, and to this end the provisions of this Act are declared to be severable."

**Art. 6067c. Age of State Facility Users**

All state park facilities may be used by any person 18 years of age or older without being accompanied by an adult.

[Acts 1971, 62nd Leg., p. 2416, ch. 764, eff. Aug. 30, 1971.]

**Art. 6068. Soliciting Donations of Park Sites or Recreational Areas—Rejecting or Transferring Title Where Unsuitable—Reversion Clauses**

The said Board<sup>1</sup> shall solicit donations to the State of tracts of land, large or small, to be used by the State for the purpose of public parks and/or recreational areas, and said Board is hereby authorized to accept in behalf of the State the title to any such tract or tracts of land, or, where the site proposed is not deemed suitable for a State Park by the State Parks Board,<sup>1</sup> to reject or refuse title so that it shall not vest in the State, or if title to a site has become vested in the State for park purposes and the site is deemed unsuitable for a State Park by the State Parks Board, whether the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes, the Board is hereby authorized and empowered to transfer title to another State Department or institution wishing the land, or where the land has been donated by a city or county or other donor, to transfer title to such city or county or other donor where they wish the site returned to them, or where the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes to transfer title to the United States of America, or where the deed to the State Parks Board contains a reversion clause providing that title shall revert to the donor when not used for park purposes, to declare that the park is unsuitable for State Park purposes and that title has reverted to the grantors; provided that in all instances where the Board acts under the authority of this statute, it must do so by a two-thirds ( $\frac{2}{3}$ ) vote of the members of the Board, and providing that the Chairman of the Board shall sign all instruments authorized under this Act.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 360, ch. 174, § 1; Acts 1939, 46th Leg., p. 516.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

**Art. 6069. Duty of Board<sup>1</sup>**

Said Board<sup>1</sup> shall make investigations of any tract or tracts of land, of any size whatsoever, in the State with a view of determining whether the same is suitable for public park purposes, and, the terms on which it can be acquired; and shall report the result of their investigations, together with their recommendations and findings to each regular session of the Legislature, for such action as the Legislature may take. The purpose of this law is to initiate a movement looking to the establishment eventually of a system of State Parks for the benefit of the people, secured either by do-

nation or purchase, or established on any land owned by the State available for such purpose. The said Board is especially directed to inspect the Davis Mountains in Jeff Davis County, to determine the feasibility of same as a park that might be made a National Park. If said Board should conclude that the Davis Mountains area is feasible as a great park, they are hereby authorized to outline the said park; take options or easements and outline a policy to finance the said Davis Mountains area as a park. Any options, easements or tentative deals that are made in regard to said Davis Mountains Park shall be subject to the action of the Legislature and shall not be binding on the State until the Legislature shall approve the action of the Parks Board.

It shall further be the duty of said Board to arrange for or employ a keeper in each of the State Parks under the control of said State Parks Board,<sup>1</sup> who shall be clothed with all the powers and authority of a peace officer of the county, for the purposes of caring for and protecting the property within said parks.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 360, ch. 175, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

**Art. 6069a. Parkways and Roads to Park-sites on Buchanan and Inks Lakes, Establishment Of**

Sec. 1. The State Parks Board<sup>1</sup> be and it is hereby authorized and directed to acquire, construct and maintain parkways, roadways, roads, bridges and trails from public roads and highways to park-sites located on and accessible to the waters of Buchanan and Inks Lakes in Burnet, Travis, Llano, Lampasas, Williamson and San Saba Counties, which park-sites may either be conveyed to the State Parks Board or owned by the Lower Colorado River Authority and dedicated to public use for park purposes.

Sec. 2. The purpose of this Act is to authorize and direct the State Parks Board to acquire rights of way for parkways and roads, either by purchase, gift or condemnation, and to build, construct and maintain roads, bridges and trails from existing public roads and highways to sites on Buchanan and Inks Lakes in such manner as in the opinion of the Board may best make the waters of such lakes accessible to the general public; and to this end the State Highway Commission is hereby authorized and directed to cooperate fully with the Board, and the Board is authorized and directed to cooperate with and to match funds with any governmental agency, State or Federal, and to sponsor any State or Federal project, and to enter into such contracts and agreements in connection therewith as to the Board may seem proper and expedient.

[Acts 1939, 46th Leg., p. 517.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

**Art. 6069b. Contracts With State Highway Commission for Construction of Roads in State Parks**

Sec. 1. The State Highway Commission and the State Parks Board<sup>1</sup> are hereby authorized to

enter into and perform agreements or contracts together for the construction and paving of roads by the State Highway Department in and adjacent to the various State Parks.

Sec. 2. All methods, requirements, and procedures necessary to enter into and perform such agreements or contracts, and the payments therefor, shall be in conformity with Chapter 340, Acts of the Fifty-third Legislature, Regular Session, 1953, known as the Interagency Cooperation Act.<sup>2</sup>

[Acts 1959, 56th Leg., p. 435, ch. 195.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

<sup>2</sup> Article 4413(32).

#### Art. 6069c. Texas State Railroad; Transfer of Certain Powers to Parks and Wildlife Department

Sec. 1. The Board of Managers of the Texas State Railroad shall continue to exercise control and management of the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, Texas, extending eastwardly to Mile Post 3.69, and to exercise the powers, duties, and authority over such right-of-way and trackage which are granted to the Board of Managers by Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes).

Sec. 2. Subject to the provisions of Section 1 of this Act and the adoption of a formal resolution of transfer by the Texas Parks and Wildlife Commission, and after the effective date of this Act, the Parks and Wildlife Commission shall assume all of the powers, duties and authority heretofore granted to the Board of Managers by Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes), insofar as such powers, duties, and authority are not inconsistent with any other provision of this Act. Following receipt of written notice by the Board of Managers of the Texas State Railroad from the Parks and Wildlife Commission of the adoption of the formal resolution, said board shall transfer all records, files, and documents of whatever nature possessed by it pertaining to the Texas State Railroad to the Parks and Wildlife Department, with the exception of the property referred to in Section 1 of this Act.

Sec. 3. The Parks and Wildlife Department may operate any part of the Texas State Railroad, with the exception of the property referred to in Section 1 of this Act, as a part of the State Parks System for park and recreational purposes and all laws which pertain to state parks shall apply to the property transferred herein. All revenues collected or received from leases or concessions shall be deposited to the State Parks Fund in the State Treasury.

Sec. 4. The provisions of Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes), are hereby repealed to the extent of conflict with the provisions of this Act.

Sec. 5. The provisions of this Act shall take effect on September 1, 1971.

[Acts 1971, 62nd Leg., p. 1249, ch. 311, eff. Sept. 1, 1971.]

#### Art. 6070. Traveling Expenses

Any locality desiring to do so may pay the expenses of said Board<sup>1</sup> on any trip to such locality to inspect land and investigate in such locality in order to ascertain whether there is a suitable site there for a State Park; but if the expenses of the Board are so paid, no money shall be paid out of the State Treasury for traveling expenses or hotel bills of said board for such trip.

[Acts 1925, S.B. 84.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070a. Park Concessions; Funds; Prison Labor

Sec. 1. The State Parks Board<sup>1</sup> is hereby authorized to operate or grant concessions in State Parks and to operate concessions or make concession contracts for any causeway, beach drive, or other improvements in connection with State Park sites wherever feasible. The revenue thus earned by the State Parks Board shall, when collected, be placed in the State Treasury. The Board may make such rules and regulations for the carrying out of this Act and the laws of this State relative to State Parks, as it may deem necessary not in conflict with law.

Sec. 2. The funds and revenue derived under the provisions of this Act and deposited in the State Treasury shall be deposited in a Special Fund to be known as the "State Parks Fund", and the State Treasurer is hereby authorized and directed to designate such Fund accordingly and carry on his records a separate account therefor; and not exceeding One Thousand (\$1,000.00) Dollars per year is hereby appropriated by the Legislature of Texas out of said Fund for the payment of the traveling and contingent expenses of the members of the State Parks Board which have been necessarily incurred in the performance of their duties.

Sec. 3. The State Parks Board shall have the use of the labor of trusty State convicts on or in connection with State Parks, said labor to be performed as required by the State Parks Board, provided that such convicts shall, at all times, be under the control of the State Prison Board and shall, during the time they are working in connection with State Parks, be considered as serving their terms in the penitentiary.

[Acts 1931, 42nd Leg., p. 287, ch. 168; Acts 1941, 47th Leg., p. 691, ch. 431, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070b. Authorizing Acquisition and Improvement of Park Sites Payable Solely From Revenue of Parks

Sec. 1. The Texas State Parks Board<sup>1</sup> is hereby authorized and empowered to acquire State park sites by purchase, gift or otherwise,

and to improve, beautify and equip, and to contract with any person, firm or corporation for the improvement, beautification or equipment of the State parks of this State to such an extent as to said Board might be deemed advisable. The authority herein given to purchase is limited to two years from the effective date of this Act.

Sec. 2. In payment for such sites and of the improvement, beautification and equipment of such parks and/or other improvements, or for the purpose of borrowing money from the Reconstruction Finance Corporation, or any other U. S. Federal Agency, or from any other person, firm or corporation, the Texas State Parks Board is further authorized and empowered to issue its evidences of indebtedness for such sum or sums of money and upon such conditions as may to said Board be deemed advisable, bearing interest at a rate not to exceed six (6%) per cent per annum, and as security for the payment thereof, said Board may pledge its rents, revenues and incomes from such improvements and/or any fees, rents or revenues from any source other than appropriations made by the State Legislature, and in furtherance thereof may have full authority to make concession contracts of any kind or character which in the judgment of said Board might be desirable.

Sec. 3. Projects financed in accordance with this law are hereby declared to be self-liquidating in character supported by charges other than by taxation.

Sec. 4. Nothing herein shall be construed as creating a debt or binding the State of Texas in any way except as to the pledge of the revenues as hereinbefore set forth.

[Acts 1933, 43rd Leg., p. 571, ch. 187.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070c. Goose Island State Park Established

Resolved by the House of Representatives of the State of Texas, the Senate concurring, That Goose Island be set aside for use as a State Park and that it be placed under control and management of the Texas State Parks Board<sup>1</sup> to be operated under the direction of such Board as a public park, and said island is hereby withdrawn from sale or lease for any purpose inconsistent with its use for park purposes.

[Acts 1931, 42nd Leg., p. 917, H.C.R. No. 43.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070c-1. Repealed by Acts 1973, 63rd Leg., p. 366, ch. 163, § 1, eff. May 23, 1973

Section 2 of the 1973 Act provided: "The land described in Chapter 6, Page 526, Acts of the 46th Legislature, General Laws, Regular Session, 1939 (Article 6070c-1, Vernon's Texas Civil Statutes), is transferred to the General Land Office."

#### Art. 6070d. Marking Historical Sites

That the State Parks Board<sup>1</sup> is authorized to locate, designate and suitably mark the historic grounds, battlefields and other historic spots

in Texas and to erect and cause to be erected thereon fitting markers or monuments in memory of the heroes and the heroic achievements that consecrated, sanctified and made immortal the glorious and resplendent pages of Texas history. No expense shall be incurred by any one in the name of the State of Texas for this project.

[Acts 1934, 43rd Leg., 3rd C.S., p. 110, ch. 58, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070d-1. Informational Publications; Sale; Disposition of Funds

Sec. 1. The Parks and Wildlife Department is hereby authorized to disseminate information to the public on State parks, State historic sites, and State scientific areas. The sale of such publications shall be made only at State parks, historic sites, scientific areas or the State Departmental headquarters, regional or district offices.

Sec. 2. Any bulletin, book or other publication, published by authority of this Act, may be sold by the Parks and Wildlife Department; and all monies received from the sale of publications provided for herein shall be deposited in the State Treasury to the credit of the State Parks Fund, and used for all purposes provided for by law. It is expressly understood that no bulletin, book or other publication referred to in this Act is to be published and sold at regular periodic intervals.

[Acts 1971, 62nd Leg., p. 1693, ch. 486, eff. May 27, 1971.]

#### Art. 6070e. Repealed by Acts 1969, 61st Leg., p. 615, ch. 210, § 1, eff. Sept. 1, 1969

#### Art. 6070f. Validation of State Park Improvement Bonds, Agreements, Actions and Proceedings; Incontestability

The State Park Improvement Bonds authorized by resolution of the State Parks Board,<sup>1</sup> adopted on January 12, 1955, which resolution was entitled, "A resolution authorizing the issuance of \$25,000,000 State Park Improvement Bonds of the State Parks Board of the State of Texas for the purpose of making improvements to state parks; confirming the sale of part of such bonds; providing for the payment of principal thereof and interest thereon; providing for the security of such bonds, and entering into certain covenants and agreements in the above connection," and all provisions, covenants and agreements in said resolution contained, and all actions and proceedings of said Board relating thereto, are hereby validated, ratified, approved and confirmed, and said State Park Improvement Bonds when issued and delivered pursuant to said proceedings, shall be valid and legally binding and enforceable obligations against the revenues so encumbered and shall be valid and legally binding and enforceable obligations of the State Parks Board in accordance with their terms and after said delivery said bonds shall be incontestable; and any changes or amendments hereafter made to said resolution or proceedings relating

to or affecting the dating or maturity dates of said bonds, the interest coupon rates, not to exceed five per cent (5%) per annum, or the order, time or manner of the application of the revenues securing such bonds, shall not impair or limit the validation thereof as is in this Act provided; and it is hereby found and determined that the issuance of said State Park Improvement Bonds in accordance with the aforementioned resolution will not create or constitute a debt or obligation of the State of Texas within the meaning of any applicable constitutional limitation or restriction.

[Acts 1955, 54th Leg., p. 801, ch. 292, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070g. Leases for Park Purposes; Transfer to State Highway Department of Areas for Roadside Parks

Sec. 1. The State Parks Board<sup>1</sup> may lease for park purposes any land and improvements it holds to any city, county, special district or other political subdivision for use for park purposes by that political subdivision. Under such lease agreements the area subject to the lease shall not be referred to as a State park, and no State funds may be used to operate or maintain any park leased under the provisions of this Section 1.

Sec. 2. Such agreements may be made on such terms as the State Parks Board and the governing body of any city, county, special district or other governmental subdivision may mutually agree upon and for such duration as may be mutually agreed upon.

Sec. 3. Any area, under the control of the State Parks Board, which is more suitable for use as a roadside park than any other park use may be transferred to the State Highway Department for roadside park purposes if it meets with the specifications of the State Highway Department.

[Acts 1961, 57th Leg., p. 1061, ch. 473.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6070h. Texas Park Development Fund

##### Conditional Enactment

Sec. 1. That this Act shall become effective and operate only upon conditions that House Joint Resolution No. 12 adopted by the 60th Legislature, 1967, and proposed as an amendment adding Section 49e to Article III of the Constitution of Texas, shall be adopted; and in that event, the effective date of this Act shall be the date on which the Governor declares such constitutional amendment adopted; otherwise, this Act shall be of no force or effect.

##### Definitions

Sec. 2. For the purpose of this Act the terms:

(a). "Department" means the Parks and Wildlife Department.

(b). "Commission" means the Parks and Wildlife Commission.

(c). "Chairman" means the Chairman of the Parks and Wildlife Commission.

(d). "Director" means the Executive Director of the Parks and Wildlife Department.

(e). "Bonds" shall mean the Texas Park Development Bonds authorized or permitted by the constitutional amendment submitted at the election held on November 11, 1967.

##### Governmental Functions of Parks and Wildlife Department

Sec. 3. The Parks and Wildlife Department is hereby authorized to perform the governmental functions authorized by this Act.

Bond Issues; Resolution; Proceeds; Interest; Form of Bonds; Registration and Approval; Re-  
placement Bonds

Sec. 4. The department by appropriate action, is hereby authorized from time to time to provide, by resolution of the commission, for the issuance of negotiable bonds in a total aggregate amount not exceeding \$75,000,000. All of such bonds shall be issued on a parity and shall be called "State of Texas Park Development Bonds." The proceeds from the sale of any bond, or bonds, shall be used for the purpose of creating the Texas Park Development Fund provided for in the Constitution. At the option of the department, said bonds may be issued in one or several installments. The bonds of each issue shall bear such date as the department shall select, and shall bear a rate or rates of interest as may be fixed by the department, which interest may, at the option of the department, be payable annually or semi-annually; shall mature serially or otherwise not later than 40 years from their date; and may be made redeemable before maturity, at the option of the department, at such price or prices, and under such terms and conditions as may be fixed by the department in the resolution of the commission providing for the issuance of the bonds. The department shall determine the form of the bonds, including the form of any interest coupons to be attached thereto, and shall fix the denomination or denominations of said bonds and the place or places of the payment of the principal and interest thereon. Said bonds shall be executed on behalf of the department as general obligations of the State of Texas in the following manner: They shall be signed by the chairman and the director, and the seal of the department shall be impressed thereon, and they shall be signed by the Governor and attested by the Secretary of State of the State of Texas with the seal of the State of Texas impressed thereon. The resolution of the commission authorizing the issuance of any installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals in lieu of manual signatures and manually impressed seals may be used in executing such bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the Chairman and the Director. In the event any officer whose signature or facsimile signature appears on any bond, or whose facsimile signature shall

appear on any coupon shall cease to be such officer before the delivery of the bond, the signature shall, nevertheless, be valid and sufficient for all purposes the same as if he had remained in office until such delivery had been made. The resolution of the commission may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. Before any such bonds so issued are delivered to the purchasers, the record pertaining thereto shall have been examined by the Attorney General of Texas and said records and bonds shall be approved by him. After which approval, the bonds shall be registered in the office of the Comptroller of Public Accounts of Texas. All such bonds, after approval by the Attorney General of Texas, registration by the Comptroller of Public Accounts of Texas, and delivery to the purchasers, shall be incontestable and shall constitute general obligations of the State of Texas. Such bonds having been approved by the Attorney General and registered in the Comptroller's office shall be held, in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations of the State of Texas. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General and a certificate of registration by the Comptroller, or duly certified copies thereof, shall be admitted and received in evidence as proof of their validity. All bonds issued in accordance with and under the provisions of this Act shall be, and are hereby declared to be negotiable instruments under the laws of this state. The department is fully authorized to provide for the replacement of any bond which might have become mutilated, lost, or destroyed.

#### Refunding Bonds

Sec. 5. The department is hereby authorized to provide by resolution of the commission for the issue of refunding bonds for the purposes of refunding any bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the department in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable. The refunding bonds may be sold and the proceeds used to retire the outstanding bonds or may be used in exchange for the outstanding bonds.

#### Legal and Authorized Investments; Security for Deposit of State Funds; Taxation

Sec. 6. All state bonds hereafter issued pursuant to the provisions of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and

for the sinking funds of cities, towns, villages, counties, school districts, and all other political subdivisions and public agencies of the State of Texas. Such state bonds when accompanied by all unmatured coupons appurtenant thereto shall be lawful and sufficient security for all deposits of state funds, and all funds of any agency or political subdivision of the state, of counties, school districts, cities, and all other municipal corporations or subdivisions at the par value of said bonds. Such state bonds and the income therefrom, including the profits made in the sale thereof, shall at all times be free from taxation within this state.

#### Notice of Sale of Bonds; Bids

Sec. 7. When the department shall have determined to sell a series of bonds, it shall be the duty of the department to publish at least one time not less than 10 days before the date of said sale an appropriate notice thereof. Said notice shall be published for such number of times as the department may determine in one or more recognized financial publications of general circulation published within the state and one or more such publications published outside the state. The department shall demand of bidders, other than the administrators of the state funds, that their bids be accompanied by exchange or bank cashier's check for such sum as it may consider adequate to be a forfeit guaranteeing the acceptance and payment for all bonds covered by such bids and accepted by the department. No installment or series of said bonds shall be sold for an amount less than the face value of all the bonds comprising such installment or series with accrued interest from their date, and all of such bonds shall be sold after competitive bidding to the highest and best bidder. The department shall have the right to reject any and all bids.

#### Entrance or Gate Fees; Deposit of Funds

Sec. 8. The department, from and after the effective date of this Act, and continuing so long as any of said bonds are outstanding, shall, wherever feasible, charge and collect entrance or gate fees to state park sites. All income derived from the charging of entrance or gate fees, less any amounts necessary to pay for expenses incurred in making these charges, shall be deposited in a special fund with the state treasurer, and said amounts to be deposited shall hereinafter be referred to as net income.

#### Special Funds

Sec. 9. For the purposes of administering the moneys provided for in this Act, there are hereby created the following special funds:

(a) The "Texas Park Development Fund," hereinafter called "Development Fund," into which shall be deposited the proceeds derived from the sale of the State of Texas Park Development Bonds, and which fund shall be used for the purpose of acquiring lands for state park sites

and for developing said sites as state parks. The expense of issuing bonds shall be considered as part of such costs.

(b) The "Texas Park Development Bonds Interest and Sinking Fund," hereinafter called "Interest and Sinking Fund," to be used exclusively for the purpose of paying principal of and interest on the bonds herein provided as the same mature and exchange and collection charges in connection therewith. Accrued interest received in the sale of any bonds shall be deposited in the Interest and Sinking Fund and the commission may, in the resolution authorizing any series of bonds, provide for the appropriation from the proceeds thereof an amount which, together with any payment for accrued interest received in the sale of such bonds, shall be sufficient to pay interest coupons to mature on such series of bonds within the then current State of Texas fiscal year and to establish such reserves as shall be deemed appropriate by the commission. All net income derived from entrance or gate fees to state park sites shall also be deposited to the Interest and Sinking Fund.

**Transfer of Funds Out of Treasury to Pay Principal and Interest on Bonds**

Sec. 9-A. In the event the amount of moneys on hand in the Interest and Sinking Fund at the end of any fiscal year is insufficient to pay the interest becoming due and the principal maturing on the bonds during the ensuing fiscal year, the state treasurer upon certification by the director as of August 15 of each fiscal year shall transfer out of the first moneys coming into the treasury of the State of Texas, not otherwise appropriated by the Constitution, such amount as stipulated in the certification of the director as shall be required to pay principal and interest on such bonds during such fiscal year. After all bonds have been paid, the balance of the Interest and Sinking Fund shall be transferred to the "State Parks Fund" established by Chapter 168, Acts of the 42nd Legislature, 1931, General Laws, page 287, as amended by Chapter 431, Acts of the 47th Legislature, Regular Session, 1941.<sup>1</sup>

<sup>1</sup> Article 6070a.

**Authority of Comptroller and Treasurer; Mandamus**

Sec. 9-B. The Comptroller of Public Accounts is hereby authorized and directed to make the transfers required under any provision of this Act. The Treasurer of the State of Texas is hereby authorized and directed to pay or cause to be paid principal and interest on bonds as they mature and come due. The performance of official actions by the Comptroller of Public Accounts and by the Treasurer of the State of Texas may be enforced through mandamus or other appropriate proceedings.

**Investment of Moneys in Special Funds**

Sec. 9-C. Moneys in the Development Fund may be invested in obligations specified in

Chapter 401, Acts of the 60th Legislature, and said Chapter 401 shall be applicable to such Fund and investments. Moneys in the Interest and Sinking Fund may be invested only in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America. Income from all such investments shall be deposited into the Interest and Sinking Fund.

**Use of Development Fund; Acquisition of Property**

Sec. 10. The Development Fund shall be used by the department for the purpose of acquiring state park sites from the United States or any governmental agency thereof, from any governmental agency of the State of Texas, or from any person, firm or corporation, by purchase, condemnation or otherwise, and for the purpose of improving, developing, beautifying, and equipping, said state park sites, and said department is hereby authorized to contract with any state or federal agency, or with any person, firm, or corporation for the purposes set out in this section. Property already devoted to a public use may be acquired in like manner; provided, that no real property belonging to the State or any political subdivision thereof, may be acquired without its consent. Condemnation authorized herein shall follow procedures as are now provided in the statutes of the State of Texas, including those provisions as provided for in Paragraph 3, Section 1 of Senate Bill No. 165, Chapter 112, 59th Legislature, Regular Session, 1965, and codified as Section 1 of Article 6081r of Vernon's Civil Statutes of Texas.

**Repealer**

Sec. 11. All laws which are in conflict in whole or in part, and specifically including Senate Bill 267, Chapter 145, Acts of the 59th Legislature, Regular Session, 1965, and codified as Section 5(a) of Article 6077j of Vernon's Civil Statutes of the State of Texas, are hereby repealed to the extent of such conflict only.

[Acts 1967, 60th Leg., p. 1031, ch. 453, eff. Nov. 11, 1967; Acts 1969, 61st Leg., p. 2294, ch. 773, §§ 1 to 4, eff. June 14, 1969.]

Enactment of this article by Acts 1967, 60th Leg., p. 1031, ch. 453, to become effective and operative as a law, was conditioned upon adoption by the electors of Const. art. 3, § 49-e, proposed by H.J.R. No. 12 of Acts 1967, 60th Leg., p. 2980. Proposed constitutional amendment was voted on at election held Nov. 11, 1967, and was approved by the electors.

Section 12 of the act of 1967 provided: "If any section, provision or part whatsoever of this Act should be held to be void as in violation of the Constitution, it shall not affect the validity of the remaining portions thereof, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions thereof, regardless of the invalidity of any part."

**2. SAN JACINTO BATTLEGROUND  
Control and Custody**

*Control and custody of the Historical State Battlegrounds, San Jacinto Battleground and Fannin State Battleground were transferred from the State Board of Control to the Parks and Wildlife Commission by Acts 1965, 59th Leg., p. 441, ch. 225, § 1. See article 6071b.*

**Art. 6071. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965**

Article 6071 established San Jacinto State Park under care and direction of State Board of Control; and was derived from Acts 1907, p. 104, and Rev.Civ.Ct.1911, art. 6395. See, now, art. 6071b.

**Art. 6071a. Change of Name**

Sec. 1. The name of San Jacinto State Park, located in Harris County, Texas, is hereby changed to San Jacinto Battleground, and the name of the San Jacinto State Park Commission now operating the battleground is hereby changed to San Jacinto Battleground Commission.

Sec. 2. Wherever the name San Jacinto State Park and the name San Jacinto State Park Commission appear in the Statutes of this State, such names and such references shall hereafter mean and apply to San Jacinto Battleground and San Jacinto Battleground Commission, respectively. All appropriations and benefits to San Jacinto State Park and San Jacinto State Park Commission shall be available and apply to San Jacinto Battleground and San Jacinto Battleground Commission, and all deeds and contracts effected under the old names shall likewise be applicable under the new names.

[Acts 1963, 58th Leg., p. 722, ch. 264.]

**Control and Custody**

*Control and custody of the Historical State Battlegrounds, San Jacinto Battleground and Fannin State Battleground were transferred from the State Board of Control to the Parks and Wildlife Commission by Acts 1965, 59th Leg., p. 441, ch. 225, § 1. See article 6071b.*

**Art. 6071b. Control and Custody of Historical State Battlegrounds**

Sec. 1. Control and custody of the Historical State Battlegrounds, San Jacinto Battleground and Fannin State Battleground, are hereby transferred from the State Board of Control to the Parks and Wildlife Commission.

Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed and specifically repealed are Articles 6071, 6072 and 6073 of the Revised Civil Statutes of Texas, and House Bill No. 787, Chapter 414, Acts of the 50th Legislature, Regular Session, 1947.

[Acts 1965, 59th Leg., p. 441, ch. 225, §§ 1, 2, eff. Sept. 1, 1965.]

**Art. 6071c. San Jacinto Historical Advisory Board**

Secs. 1, 2. [Classified as article 6071b.]

Sec. 3. The San Jacinto Historical Advisory Board shall be composed of five (5) members. Two (2) members of the Advisory Board shall be the Chairman of the Battleship Texas Commission and the President of the San Jacinto Museum of History Association. Three (3) members shall be appointed by the Governor, one (1) for a two-year term, one (1) for a four-year term and one (1) for a six-year

term; all appointments thereafter shall be for six-year terms. In making the appointment of the three (3) members who shall serve on the first San Jacinto Historical Advisory Board effective with the effective date of this Act, the Governor shall appoint as one of the members the outgoing Chairman of the San Jacinto Battleground Commission. One or more of the three (3) members may, in the discretion of the Governor, be selected from the patriotic organization known as the San Jacinto Chapter, Daughters of the Republic of Texas.

Sec. 4. The San Jacinto Historical Advisory Board shall meet quarterly to review the policies and operations of the San Jacinto Battleground for the purpose of advising the Parks and Wildlife Commission on the proper historical development of the Battleground. The Board is authorized to accept in the name of the State of Texas all bequests, gifts, and grants of money or property made to the San Jacinto Battleground to be used for such purposes as the grantor of such bequests may specify. All data collected by the Board shall be the property of the State of Texas, and they shall be used to depict the story of Texas Independence and the History of Texas at this sacred historic site. All historical data and Museum items held in the name of the San Jacinto Museum of History Association on the effective date of this Act shall remain the property of the said San Jacinto Museum of History Association.

It is further provided that those Museum Acquisitions heretofore or which may be hereafter acquired by the San Jacinto Museum of History Association from gifts, grants, bequests, donations or with such funds in the custody and control of the San Jacinto Museum of History Association now and in the future shall become and remain the property of the said Association. The said Association is hereby duly recognized in its capacity as a private non-profit historical association organized for the purpose of operating the San Jacinto Memorial Building and Tower and establishing a historical museum therein as more fully described and provided for by Senate Concurrent Resolution No. 29, 54th Legislature, Regular Session, 1955.

[Acts 1965, 59th Leg., p. 441, ch. 225, §§ 3, 4, eff. Sept. 1, 1965.]

**Arts. 6072, 6073. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965**

Articles 6072 and 6073 provided for appointment of San Jacinto State Park commissioners and prescribed their duties; and were derived from Acts 1907, secs. 6 and 7, and Rev.Civ.St.1911, arts. 6396 and 6397, respectively. See, now, art. 6071b.

**3. GONZALES STATE PARK****Arts. 6074, 6075. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2**

These articles, Acts 1913, p. 242, related to the acceptance of the title and improvement and care of Gonzales State Park. Control and custody of Gonzales State Park is transferred from State Board of Control to State Parks Board, by art. 6067a.

## 4. WASHINGTON STATE PARK

Arts. 6076, 6077. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

These articles, derived from Acts 1923, p. 123, related to the name and management of the Washington State Park. Control and custody of Washington State Park is transferred from State Board of Control to State Parks Board, by art. 6067a.

## 4A. GOLIAD STATE PARK

*Acts 1971, 62nd Leg., p. 2257, ch. 690, § 1, made the General Ignacio Zaragoza Birthplace a part of Goliad State Park. See article 6077s, § 2.*

Art. 6077a. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

This article, derived from Acts 1931, 42nd Leg., p. 39, ch. 31, related to the creation and management of Goliad State Park. Control and custody of such park is transferred from State Board of Control to State Parks Board, by art. 6067a.

Art. 6077a-1. Mission of San Rosario; Conveyance of Land by Goliad County

Sec. 1. The County of Goliad is authorized to convey to the Parks and Wildlife Department of the State of Texas, and the Parks and Wildlife Department is authorized to accept on behalf of the State of Texas title to the surface of 4.77 acres of land in the County of Goliad, Texas, said 4.77 acres of land, more or less, being the following described parcel of land:

BEGINNING at a concrete monument in the Southeast Right-of-Way line of State Highway No. 12, same being a R/W marker for said Highway, and being 50 ft. at right angles from the center line of said Highway, and marked Sta. 914/00;

THENCE South 39 deg. 36 min. West, with right-of-way fence, 295.9 ft. to a concrete monument for corner of this present survey;

THENCE South 56 deg. 02 min. East, at 148.0 ft. an iron pipe, at 350.0 ft. a concrete monument for corner of this present survey;

THENCE South 32 deg. 08 min. East, at 69.9 ft. an iron pipe, at 193.3 ft. a tack in cedar post at 241.4 ft. a concrete monument for corner of this present survey;

THENCE North 83 deg. 35 min. East, 193.4 ft. to a concrete monument for corner of this present survey;

THENCE North 17 deg. 46 min. East, at 109.7 ft. an iron pipe, at 227.3 ft. a concrete monument for corner of this present survey;

THENCE North 43 deg. 17 min. West, at 116.8 ft. an iron pipe, at 240.5 ft. a concrete monument for corner of this present survey;

THENCE North 57 deg. 21 min. West, at 193.3 ft. an iron pipe, at 356.3 ft. a concrete monument for corner of this present survey; same being a highway R/W

marker for said Highway for extra width in R/W and also marked Sta. 914/00;

THENCE North 49 deg. 55 min. West, with Highway R/W line, 34.9 ft. to the place of beginning;

Containing Four and 77/100 (4.77) acres of land and all being out of Maria de Jesus de Leon Survey, Abstract 21, Goliad County, Texas.

Said 4.77 acres of land, more or less, being the land conveyed to the County of Goliad by William J. O'Connor on July 15, 1935, as shown by deed of such date duly recorded in Volume 77, Page 565, of the Deed Records of Goliad County, Texas, on July 17, 1935, and to which reference is here made for all pertinent purposes.

Sec. 2. The premises above described shall be memorial grounds and park site of the Mission of San Rosario and a part of Goliad State Park. The park site of the mission is to be fenced with an appropriate and substantial park fence and the grounds cared for so as to be a fit and appropriate memorial ground for the site of the mission. The Parks and Wildlife Department is authorized to care for and protect the area and to construct, maintain, and repair historical and recreational structures, fences, and facilities therein.

Sec. 3. If the State of Texas ceases to use and maintain the above-described lands as provided in Section 2 of this Act, all right, title, and interest granted and conveyed under the authority of this Act shall revert to the County of Goliad. All minerals under the above-described lands are excepted from the provisions of this Act and any conveyance executed in accordance with this Act.

[Acts 1971, 62nd Leg., p. 2257, ch. 691, eff. June 4, 1971.]

## 4B. BIG BEND STATE PARK

Art. 6077b. Creation of Canyons State Park<sup>1</sup>

Sec. 1. The Texas Canyons State Park is hereby created as one of the State Parks of Texas, and shall consist of the lands hereinafter described in Section 2, of this Act.

Sec. 2. The Legislature of the State of Texas hereby withdraws from sale the following sections of land dedicated to the Public School Fund. All unsold public free school lands situated in the following blocks and abutting the Rio Grande River, to-wit:

Sections 42, 54 and 56, Block 341 T. C. Ry. Co. land in Brewster County, Texas.

Sections 2, 21, 23, 39 and 41, Block 16, G. H. & S. A. Ry. Co. land in Brewster County, Texas.

Sections 4, 12 and 14, Block G, 17, in Brewster County, Texas.

Sections 11, 12, 17 and 20 in Block B2, G. H. & S. A. Ry. Co. land in Brewster County, Texas.

Said above described sections of land are hereby transferred and conveyed from the State School Fund to the State of Texas, for park purposes, and are hereby valued at the sum of Five (5) Cents per acre, and such amount shall be paid by the State Treasurer from the General Revenue into the Public School Fund as consideration for said lands and in lieu of said lands. The sum of One Thousand Dollars (\$1,000.00), or so much thereof as may be required, is hereby appropriated out of the General Revenue of the State of Texas to be paid to the Permanent School Fund of the State of Texas for consideration of said land transferred and conveyed and in lieu of said lands. All minerals in and under the above described sections of land are reserved to the Public Free School Fund.

Sec. 3. The Texas State Park Board<sup>2</sup> shall take over the maintenance of the Texas Canyons State Park as soon as the transfer of said lands shall be effected.

[Acts 1933, 43rd Leg., Spec.Laws p. 126, ch. 95.]

<sup>1</sup> Canyons State Park renamed Big Bend State Park, see art. 6077c, § 4, post.

<sup>2</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6077c. Creation of Big Bend State Park

Sec. 1. All lands south of parallel of latitude 29° 25' north, lying and being situated in Brewster and Presidio Counties heretofore or hereafter purchased by the State for delinquent taxes which are not redeemed within the time prescribed by law, shall become the property of the State of Texas for park purposes and shall be under the supervision and control of the Texas State Parks Board,<sup>1</sup> and in such event the State shall not be required to pay to the counties any taxes which may have accrued on said lands, but the State of Texas shall take said lands free and clear of all claims of the counties of the State of Texas and free from the claims of all officers who have accrued costs by reason of the original sale of said lands for delinquent taxes. The Sheriff in each county affected by the provisions of this Act shall upon the expiration of the time when lands may be redeemed, or as soon thereafter as practicable, execute a deed to said land or lands affected by the provisions of this Act, giving a full description of the same to the State of Texas for park purposes. The said Texas State Parks Board shall take over the control and management of said lands. Should any of said lands, the title to which is thus acquired by the State of Texas, be State school lands on which there is an indebtedness to the Public School Fund, said lands shall not be sold or transferred by the Texas State Parks Board until said Board has paid any balance or balances then due and unpaid to the State School Fund, and no acquisition by the Texas State Parks Board of any lands which were at any time heretofore dedicated to the Permanent School Fund shall impair or decrease any obligation, debt or lien on said lands held by or due the Permanent School Fund.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

Sec. 2. Upon the acquisition by the State of Texas of the title to any land under the provisions of this Act, all the mineral estate in and under said land shall be reserved to the State of Texas for the benefit of the Permanent Public Free School Fund to be disposed of under present or future laws. In the transfer of any such land, either by sale or exchange by the Texas State Parks Board, all instruments of sale or exchange shall expressly reserve to the State for the benefit of the Permanent School Fund all the mineral estate in and under said lands.

Sec. 3. Within sixty (60) days of the date of acquisition of the surface estate in any lands under this Act, the Texas State Parks Board shall file in the General Land Office at Austin certified copies of the instruments of acquisition, together with accurate descriptions of the lands acquired, and the Commissioner of the General Land Office shall make proper records of the ownership of the minerals in said lands by the Permanent School Fund, and shall furnish to the State Parks Board, as soon as practicable after receipt of description of the land by the Land Commissioner, statements of any amounts due the Permanent School Fund on account of any such lands.

Sec. 4. The Texas Canyons State Park, created as one of the State Parks of Texas, by House Bill No. 771, of the Regular Session of the Forty-third Legislature,<sup>1</sup> is hereby renamed Big Bend State Park, and said Big Bend State Park shall consist of the lands described in said Act, and other lands as described in Section 1 of this Act, or falling within the boundaries of the area designated in a survey by the National Park Service as a proposed Big Bend National Park, more particularly described as follows:

Beginning on the international boundary line at a point on the Rio Grande River at latitude 29° 20' and longitude 102° 53', thence on a line which bears N. 29° 0' W. a distance of 1.75 miles approximately to B. M. (3940), thence N. 49° 0' W. a distance of approximately 6.75 miles to B. M. on Sue Peaks, thence N. 18° 0' W. approximately 11.8 miles to an intersection with latitude 29° 35' and longitude 100° 02½', thence N. 52° 30' W. an approximate distance of 9.4 miles to a point which is latitude 29° 40' and longitude 103° 10', thence due north on longitude 103° 10' a distance of ½ mile, thence due west a distance of ½ mile, thence due south ½ mile to latitude 29° 40', thence S. 5° 15' E. an approximate distance of 5.8 miles to a point which is latitude 29° 35' and longitude 103° 10', thence due south on longitude 103° 10' to a point on said longitude line 2 miles south of latitude 29° 30', thence S. 83° 30' W. an approximate distance of 13.7 miles to B. M. (4405), thence S. 42° 30' W. an approximate distance of 20.6 miles to B. M. (2316), thence N. 6° 30' W. about 9½ miles to the international boundary line on

the Rio Grande River, thence following the international boundary line along the river in a general easterly direction to the point of beginning, containing approximately 736,000 acres.

<sup>1</sup> Article 6077b.

Sec. 5. The Legislature of the State of Texas hereby withdraws from sale all unsold Public Free School Lands situated in Brewster County, Texas, South of North Latitude 29° 25'; and said lands, estimated to consist of about one hundred and fifty thousand (150,000) acres, are hereby transferred and conveyed from the State Public School Fund to the State of Texas for park purposes, and shall become a part of the Big Bend State Park, and are hereby valued at the sum of one cent per acre, which amount shall be paid by the State Treasurer from the General Revenue into the Public School Fund as consideration for said lands, and in lieu of said lands. The sum of One Thousand, Five Hundred Dollars (\$1,500.00), or so much thereof as may be required, is hereby appropriated out of the General Revenue of the State of Texas, to be paid to the Permanent School Fund of the State of Texas, in consideration of said lands transferred and conveyed, and in lieu of said lands. All minerals in and under the above described sections of land are hereby reserved to the Public Free School Fund, to be developed under present or future laws as minerals under other unsold school land. Upon the taking effect of this Act, the Commissioner of the General Land Office shall prepare a list of the lands affected by this Act, and shall deliver one copy to the Texas State Parks Board and one copy to the State Treasurer, and shall certify to the State Treasurer the number of acres contained in said land.

Sec. 5-A. The Legislature of the State of Texas hereby withdraws from sale and lease all unsold Public Free School land situated in Brewster County lying north of North latitude 29° 25', which is included in the area set out as the proposed Big Bend National Park, as described in Section 4 of this Act, as amended.

Sec. 6. The Texas State Parks Board shall take over the maintenance of all lands included within the terms of this Act and within the Big Bend State Park area, and shall have supervision and control of said parks. Said Texas State Parks Board shall be authorized, and authority is hereby expressly given to them, to contract to exchange any lands included within the Big Bend State Parks with any person, firm or corporation, for any other lands in Brewster County, situated within the area bounded on the South by North Latitude 29° 10' and on the North by North Latitude 29° 20' and on the East by West Longitude 103° 10' and on the West by West Longitude 103° 25'; considered more suitable, or better located for park purposes; said Texas Parks Board shall be authorized to make contracts for the exchange of such lands, with any person, firm or corporation, but said contracts shall not be ef-

fective until approved by the Governor, Attorney General, and Commissioner of the General Land Office. Upon the making of such contracts and approval by the above constituted Board, the Governor of the State of Texas, is authorized and directed to issue conveyances for same, reserving to the State School Fund, all minerals under said land. In case any lands sought to be acquired by the Texas State Parks Board by exchange, under the provisions of this Act, shall be unpatented State School Land, the indebtedness against said land shall be transferred to the land given in exchange. The State Parks Board, shall certify to the Commissioner of the General Land Office a description of any lands acquired by it from any source in said Big Bend State Park area within ninety (90) days of date of acquisition, together with a certified copy of the instrument of transfer, and the Commissioner of the General Land Office shall list said lands as mineral lands belonging to the Permanent School Fund and shall make proper record thereof in the Land Office.

Sec. 6-A. The Texas State Parks Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual, group of individuals or corporation, private or municipal, having title to such land. The Texas State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund to be used for the sole and only purposes provided herein. The Texas State Parks Board is also hereby authorized and empowered without condemnation proceedings, or purchase through condemnation proceedings, or by gift or donation, to acquire lands within the foregoing area not now owned by the State of Texas, to be used for park purposes. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State of Texas, for that purpose following the procedure applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area.

Sec. 7. If any part of this Act should be held unconstitutional, such decision shall not affect the validity of the remaining portions of

this Act, it being the intention of the Legislature that such remaining portions shall operate as a valid law; and it is further the intention of the Legislature to withdraw from sale the surface estate in the public school lands, in the Big Bend Park areas.

Sec. 8. This Act shall be cumulative of all other laws on this subject, and in so far as it is inconsistent with the General Laws of this State it shall supersede the same in that part of the State to which this Act applies.

[Acts 1933, 43rd Leg., 1st C.S., p. 275, ch. 100; Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, §§ 1 to 3.]

**Art. 6077d. State Park Board<sup>1</sup> to Execute Quit-Claim Deeds to Record Owners of Property Sold for Taxes and Acquired for Parks Where Taxes Not Actually Delinquent**

The Texas State Parks Board<sup>1</sup> shall execute quit-claim deeds to any and all lands being and situated in the Big Bend National Park or the Big Bend State Park in Brewster County, which lands were sold for taxes and were acquired by the State of Texas for park purposes under such tax sales under the terms and provisions of Chapter 100, Acts of the First Called Session of the Forty-third Legislature<sup>2</sup> to the record owners thereof at the time of such tax sales in all cases where the taxes on such lands were not actually delinquent, and in which cases the original owners can produce valid tax receipts or a tax certificate from the Tax Collector of Brewster County showing that all taxes on the lands were paid each year in accordance with the laws of this State in the required time and were not actually delinquent.

[Acts 1939, 46th Leg., p. 519, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

<sup>2</sup> Article 6077c.

**4C. BIG BEND NATIONAL PARK**

**Art. 6077e. Creation of Big Bend National Park**

**Area**

Sec. 1. That when the title to the following described lands situated in Brewster County, Texas, shall have become vested in the State of Texas for park purposes under the terms of this Act or any previous Act or Acts or that have been acquired or that have become vested under any previous Act or Acts, such lands shall be and are hereby established, dedicated and set apart as a public park for the benefit and enjoyment of the people and shall be known and designated as the "Big Bend National Park" which area is approximately defined by the following metes and bounds:

Beginning at a point on the north bank of the Rio Grande River marked by a wooden monument painted white, about six feet high, and located at Long. 102° 50' 47"; Lat. 29° 22' 09"

Thence: N 65° 20' W approximately 9.1 miles to B. M. 5857 on Sue Peaks;

Thence: N 18° 0' W approximately 11.8 miles to a point at Long. 103° 2½'; Lat. 29° 35';

Thence: N 52° 30' W approximately 9.4 miles to a point at Long. 103° 10'; Lat. 29° 40';

Thence: N ½ mile;

Thence: W ½ mile;

Thence: S ½ mile to a point ½ mile west of Long. 103° 10'; Lat. 29° 40';

Thence: S 5° 15' E approximately 5.8 miles to a point at Long. 103° 10'; Lat. 29° 35';

Thence: S approximately 7.8 miles;

Thence: S 83° 30' W approximately 13.7 miles to B. M. 4405;

Thence: S 42° 30' W approximately 20.6 miles to B. M. 2316;

Thence: N 82° 30' W approximately 9.5 miles to a monument similar to the one described at the point of beginning and located on the N. bank of the Rio Grande River at Long. 103° 46' 17"; Lat. 29° 14' 48";

Thence: Following the international boundary line along the Rio Grande River in a generally easterly direction to point of beginning, containing approximately 788,000 acres.

Provided, however, in the event it should prove advantageous to the State of Texas in acquiring land within this area to include other and adjoining lands than that comprised within the foregoing boundaries, then it will be permissible under this Act to acquire such additional lands in such amounts just so the total amount purchased or acquired in said area does not exceed one million acres.

**Authority of State Agency**

Sec. 2. The Texas State Parks Board<sup>1</sup> is hereby empowered and authorized to carry out the purposes and provisions of this Act and to employ such employees or assistants as may be necessary from time to time for the accomplishment of the provisions herein set forth. That the members of said Parks Board shall not receive any additional compensation for their services, except to be reimbursed for all necessary and actual traveling expenses incurred in carrying out the provisions of this Act.

Said Board is hereby authorized and empowered to acquire either by purchase or condemnation proceedings, or by gift or donation lands within the foregoing area not now owned by the State of Texas or that is not now owned by the State of Texas for park purposes, said land so acquired to be used only for park purposes. Said Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual group of individuals or corporation, private or municipal, having title to such land. The Tex-

as State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund in the State Treasury to be used for the sole and only purpose provided herein. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State of Texas, for that purpose following the procedure applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area. That all land acquired by said Board shall be for the use and benefit of the State of Texas for recreational park purposes and shall be under the supervision and control of the Texas State Parks Board.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Withdrawal of School Lands From Sale; Transfer

Sec. 3. The Legislature of the State of Texas hereby withdraws from sale or lease all unsold public free school lands situated within the boundaries of the area described in this Act and which has been designated as the Big Bend National Park and hereby transfers and conveys said land from the State Public School Fund to the State of Texas for park purposes only, and upon payment being made for said land as hereinafter set out the title thereto shall vest in the State of Texas for park purposes only, and said land shall become a part of the Big Bend National Park. Said land is hereby valued at the sum of one dollar per acre which amount shall be paid therefor to the State Treasurer of the State of Texas to be credited to the State Public School Permanent Fund as consideration for said lands and in lieu of said lands. Said lands hereby transferred and conveyed are conveyed in fee simple title without any mineral reservation. The amount of the consideration for said conveyance of said Public School lands is to be paid out of any appropriation hereinafter made in this Act, or that may hereafter be made for said purpose in any other Act or Acts or from any gift or donation of funds that may be made to the State Parks Board for the purchase of land within the area that has been designated by this Act as the Big Bend National Park. The Commissioner of the General Land Office shall prepare a list of the lands

now owned by the State Public School Fund situated within this area and which has not heretofore been transferred or conveyed by the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature,<sup>1</sup> and shall deliver one copy to the Texas State Parks Board and shall certify and furnish to the State Treasurer of the State of Texas a copy of said list showing the number of acres and a proper description thereof, and on the basis of said certificate the State Treasurer is hereby authorized to make proper settlement, credits, and transfers of monies from the General Fund of the State of Texas hereby appropriated to the State Public School Fund, and to make proper settlement and credits from payment received from the Texas State Parks Board out of any donations or gifts of monies made to said Board to the State Public School Fund for the purpose of purchasing said school lands for park purposes. That the Texas State Parks Board is hereby authorized and empowered in conjunction with the State Treasurer to designate the proper amount of acreage contained in said certificate in accordance with the payments so made in proportion to the amount paid therefor.

<sup>1</sup> Article 6077c.

#### Conveyance of Mineral Estate

Sec. 4. Where the mineral estate has been severed from the surface estate in Public Free School lands situated within the boundaries of the area which has been designated herein as the Big Bend National Park, the Legislature of the State of Texas hereby transfers and conveys all the mineral estate now owned by the State of Texas for the benefit of its Public Free School Fund to the State of Texas for park purpose only and the title to said mineral estate shall vest upon the payment of the consideration hereinafter set out. The amount of consideration for said conveyance shall be at the rate of fifty cents per acre and shall be paid to the State Treasurer of the State of Texas to be credited to the Public School Permanent Fund as consideration for said mineral estates in said lands and in lieu of said mineral estates in said public school lands. That said consideration shall either be paid by a transfer to be made by the State Treasurer from the General Fund of the State of Texas to the Public School Fund from the appropriation hereinafter made in this Act or from appropriations that may be hereafter made for said purpose or may be made by proper credit to be made by the State Treasurer from payments that may be made by the Texas State Parks Board from the special fund established by this Act for purchase of lands situated within the area that has been designated as the Big Bend National Park. That upon the taking effect of this Act, the Commissioner of the General Land Office shall prepare a list of the lands in which the State of Texas owns only the mineral estate situated in the area designated as the Big Bend National Park herein for the benefit of the State Public School Fund and shall de-

liver one copy to the State Parks Board and one copy to the State Treasurer and shall certify to the State Treasurer the number of acres covered by said mineral estates and a proper description thereof which certificate shall form the basis for the credits to be made by the State Treasurer covering the transfer and conveyance of the mineral estates covered by this Act.

#### Exchange of Lands

Sec. 5. The Texas State Parks Board is hereby authorized to exchange any lands that have been acquired for park purposes under the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature, and that may have been acquired for park purposes under Chapter 95, Acts Regular Session Forty-third Legislature,<sup>1</sup> that are situated outside of the boundaries of the area described and designated in this Act as the Big Bend National Park, for lands not yet acquired for park purposes within the area which has been described in this Act and designated as the Big Bend National Park.

<sup>1</sup> Article 6077b.

#### Limitation on Price Per Acre

Sec. 6. The Board in the purchase of lands within said area from private owners thereof, shall not pay a greater price than Two (\$2.00) Dollars per acre, exclusive of improvements thereon, for voluntary sales where the consideration is to be paid out of appropriations made from the General Fund of the State of Texas, provided this limitation shall not apply on lands acquired through condemnation proceedings. That all such lands shall be acquired in fee simple title without any reservation of any character whatsoever. That where lands have been sold by the State of Texas for the benefit of the State Public School Fund on the deferred payment plan and there are now outstanding balances due from the purchasers upon obligations executed for the purchase of said land and as a part of the consideration therefor, the Board shall place a value on the purchasers' equity therein and pay such purchaser or purchasers therefor not to exceed the amount of Two (\$2.00) Dollars per acre, exclusive of improvements where said consideration is to be paid out of appropriations made from the General Fund of the State of Texas, and to pay the State of Texas for the benefit of the Public School Fund the amount of unpaid balance due thereon. The limitation as to the amount that shall be paid per acre for the land shall not apply to payments that are to be made out of the special fund created by this Act but shall only apply to payments or part-payments to be made out of the appropriations payable out of the General Fund of the State of Texas.

#### Transfer of Lands

Sec. 7. All lands acquired by the State of Texas for park purposes under the provisions of Chapter 100, Acts First Called Session, For-

ty-third Legislature which is situated within the area herein defined and designated as the Big Bend National Park is hereby transferred and conveyed to the State of Texas for park purposes and shall be designated as the Big Bend National Park.

#### National Park; Concurrent Jurisdiction

Sec. 8. The United States Government, through the Secretary of the Interior or any other Agency, is hereby authorized to acquire title, to hold, occupy and possess the area herein defined as the Big Bend National Park and the Governor of the State of Texas is hereby authorized to execute a deed of conveyance to the United States Government covering the area acquired under the terms of this Act as the Big Bend National Park for the use of the public for recreational park purposes, in consideration of the United States Government agreeing to establish and maintain the said area as a National Park under an Act of Congress, being Public—No. 157,<sup>1</sup> enacted by the Seventy-fourth Congress of the United States and to cede to the United States jurisdiction over said lands in conformity with the provisions of Article 5247, of the Revised Civil Statutes of Texas, 1925; reserving, however, to the State of Texas, the right to retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal, issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded as the area for the Big Bend National Park, in like manner and like effect as if no such cession had taken place; and, reserving further, to the State the right to levy and collect taxes on sales of products or commodities upon which a sales tax is levied in this State, and to tax persons and corporations, their franchises and properties, on land or lands deeded and conveyed under the terms of this Act; and reserving also, to persons residing in or on any of the land or lands deeded or conveyed under the terms of this Act to the United States Government the right to vote at all elections within the counties, in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such counties had not such lands been deeded or conveyed as aforesaid to the United States of America.

[Acts 1939, 46th Leg., p. 520.]

<sup>1</sup> 16 U.S.C.A. §§ 156, 157, 158.

#### 4D. QUINTANA STATE PARK

##### Art. 6077f. Quintana State Park

Sec. 1. Whereas, the citizens of Freeport and Brazoria County have tendered to the Texas State Parks Board<sup>1</sup> as a donation certain land in the town of Quintana, in Brazoria County, Texas, adjacent to the West jetty and bordering on the Gulf of Mexico, including all of Block Numbered Twenty-seven (27) and the accretions thereto, all of Block Numbered

Twenty-six (26) B and the accretions thereto, all of Block Numbered Twenty-eight (28) B, and all of Block Numbered Twenty-eight (28) C and the accretions thereto, according to the maps of said town of Quintana, aggregating about one hundred and twenty-five (125) acres of land, more or less, for the establishment and operation thereon of a State Park to be known as "Quintana State Park," and the Texas State Parks Board has adopted the following resolution, to-wit:

"Whereas, The citizens of Freeport, Texas, and Brazoria County are seeking to acquire certain lands on the Gulf of Mexico to be designated as a State Park, and improved by Convict Labor: and

"Whereas, Such a tract would provide a State Park with a sand beach and breakers;

"Therefore, Be it resolved by the Texas State Parks Board that the park site proposed by the Brazoria County workers be declared suitable for a State Park and be accepted when deeds and titles have been correctly prepared and given to the State Parks Board, and when all the conditions requisite to the establishment of a State Park have been met, and the Executive Secretary is charged with the duty of seeing that such conditions are complied with."

Sec. 2. The Legislature does hereby authorize and approve the acceptance by the Texas State Parks Board the donation of said land for the establishment and operation thereon of a State Park to be known as "Quintana State Park," subject to compliance with the conditions set forth in the foregoing resolution of the Texas State Parks Board.

[Acts 1939, 46th Leg., p. 529.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### 4E. STEPHEN F. AUSTIN STATE PARK

##### Art. 6077g. Stephen F. Austin State Park

Sec. 1. The State of Texas accepts title to said ground when conveyed in fee simple without reservations, conditions, or exceptions by San Felipe Park Association and Corporation of San Felipe de Austin, and dedicates it as a state park in commemoration of the historical events that have occurred at San Felipe de Austin, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the Texas State Parks Board.<sup>1</sup>

Sec. 2. The said land and grounds shall hereafter be known and styled "Stephen F. Austin State Park," and shall be under the care and direction of the Texas State Parks Board, which shall endeavor to improve, preserve, and protect the lands and property within said Stephen F. Austin State Park.

[Acts 1939, 46th Leg., p. 527.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

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#### 4F. JIM HOGG MEMORIAL PARK

##### Art. 6077h. Jim Hogg Memorial Park

That the State of Texas accepts the title to approximately one hundred and eighty (180) acres of land, a part of the General Joseph L. Hogg homestead in Cherokee County, tendered as a donation by the heirs of Governor James Stephen Hogg and dedicates it as a public State Park in commemoration of the birth of Governor James Stephen Hogg, said park to be known as the Jim Hogg Memorial Park, and agrees to beautify and protect same, which said ground shall be under the care and direction of the State Parks Board,<sup>1</sup> such improvements to include as far as possible a replica of the original Hogg home and grounds adjacent to the residence.

[Acts 1941, 47th Leg., p. 266, ch. 180, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

##### Art. 6077h-1. Facilities for Recreational and Park Purposes; Sale of Timber

Sec. 1. The State Parks Board<sup>1</sup> is hereby authorized to repair, build, or construct facilities, to be used for recreational and park purposes at the Jim Hogg State Park, and to work in conjunction and cooperation with other governmental agencies in carrying out the purposes of this Act. To pay for the repairing, building, or construction of such facilities, the State Parks Board is hereby authorized to sell the timber or any part thereof from the lands comprising said Jim Hogg State Park and to use whatever amount of said timber is necessary to repair, build, or construct the improvements herein authorized; provided, however, that the timber to be sold or used shall be selectively cut under the supervision of the Texas Forest Service.

Sec. 2. The timber herein authorized to be sold shall be sold on competitive bids, the contract to be awarded to the party or parties who, in the judgment of the Texas Forest Service, have submitted the highest and best bid. Such contract, however, shall not be let until the same has been approved by the State Parks Board. The Texas Forest Service shall advertise for a period of two (2) weeks in at least one weekly newspaper, published and circulated in Cherokee County, for the sale of such timber or any part thereof, giving the necessary information pertaining thereto, and the time and place for receiving such bids. The first publication shall be at least ten (10) days before the date of receiving the bids. All such competitive bids shall be kept on file by the Texas Forest Service as part of their records and shall be subject to inspection by anyone desiring to see them. Copies of such bids shall be furnished to the State Parks Board. The Texas Forest Service shall have the right to reject any and all of said bids and re-advertise for new bids.

Sec. 3. There is hereby created a special fund to be known as the "Jim Hogg State Park Building Fund." The moneys derived from the

sale of timber cut from the lands of said park shall be placed in the State Treasury to the credit of the above-designated fund and shall be expended by the State Parks Board in accordance with the provisions of this Act.

[Acts 1951, 52nd Leg., p. 133, ch. 82.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6077h-2. Sale of Iron Ore

Sec. 1. The State Parks Board<sup>1</sup> is hereby authorized and empowered to sell iron ore in place for reasonable and valuable considerations, located in or on the lands of Jim Hogg State Park and to grant all rights necessary to the development of said iron ore to the purchasers thereof. The Chairman of the State Parks Board is hereby authorized, for and on behalf of said Board, to execute and deliver the necessary instruments to convey said iron ore in place to the purchasers thereof.

Sec. 2. The iron ore herein authorized to be sold shall be sold on competitive bids, the contract to be awarded to the party or parties who, in the judgment of the State Parks Board, has submitted the highest and best bid. The State Parks Board shall advertise for a period of two (2) weeks in at least one (1) weekly newspaper, published and circulated in Cherokee County, for the sale of such iron ore or any part thereof, giving the necessary information pertaining thereto, and the time and place for receiving such bids. The first publication shall be at least ten (10) days before the date of receiving the bids. All such competitive bids shall be kept on file by the State Parks Board as part of their records and shall be subject to inspection by anyone desiring to see them. Copies of such bids shall be furnished to the State Parks Board. The State Parks Board shall have the right to reject any and all of said bids and readvertise for new bids.

Sec. 3. There is hereby created a special fund to be known as the "Jim Hogg State Park Building Fund." The moneys derived from the sale of iron ore from the lands of said park shall be placed in the State Treasury to the credit of the above designated fund and shall be expended by the State Parks Board in the improvement of Jim Hogg State Park.

Sec. 4. The State Parks Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment carry out the provisions of this Act and protect the income from the iron ore sold in place hereunder. A majority of the State Parks Board shall have power to act in all cases, except where otherwise herein provided.

[Acts 1953, 53rd Leg., p. 461, ch. 147.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6077h-3. Construction and Maintenance Work Within Park; Force Labor

After the effective date of this Act, the Wood County Commissioners Court, including the County Judge and each of the four (4) Commissioners representing the four (4) Commissioners Precincts of said County, are here-

inafter granted the power and authority to employ the use of force labor, county owned equipment and technical help in any and all construction work after agreement with the State Parks Board,<sup>1</sup> within the bounds of the Governor James Stephen Hogg Memorial Shrine Park, located in the City of Quitman, Wood County, Texas. For the purpose of fulfilling the provisions of this Act, the Commissioners Court of Wood County will be authorized to remove underbrush, provide adequate drainage, construct driveways and to maintain sections of said Park all in accordance to the plans and specifications now in existence and to be outlined by the State Parks Board. Nothing in this Act shall be construed to mean that the Commissioners Court of Wood County shall be required to perform work within the scope of this Act by the State Parks Board, but rather on a permissive and voluntary basis.

[Acts 1959, 56th Leg., p. 985, ch. 460, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### 4G. KING'S MEMORIAL STATE PARK

Art. 6077i. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

This article, derived from Acts 1941, 47th Leg., p. 687, ch. 428, related to the establishment, care and direction of King's Memorial State Park. See, now, art. 6067a.

#### 4H. PALO DURO CANYON STATE PARK

Art. 6077j. Palo Duro Canyon State Park; Renewing Outstanding Indebtedness; Entrance Fees; Leases; Lands Included

##### Extension of Outstanding Indebtedness

Sec. 1. The Texas State Parks Board<sup>1</sup> is hereby authorized and empowered to renew and extend outstanding indebtedness secured by deeds of trust and a vendor's lien on the lands and properties comprising the Palo Duro Canyon State Park to the extent of Three Hundred Thousand (\$300,000.00) Dollars; to evidence the renewed indebtedness by the issuance and delivery to the owners and holders thereof of its bonds, notes or warrants, payable over a period not to exceed forty (40) years, with interest, payable annually or semiannually, at a rate not to exceed three per cent (3%) per annum; and to mortgage and encumber the lands and properties comprising said Palo Duro Canyon State Park, and the revenue and income derived therefrom, to secure the payment of said bonds, notes or warrants; provided, however, that all such indebtedness, over and above the sum of Three Hundred Thousand (\$300,000.00) Dollars, shall be released and extinguished by the owners and holders thereof before such bonds, notes or warrants are delivered.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

##### No State Debt Created; Required Clause

Sec. 2. Nothing herein shall be construed as creating a debt against the State of Texas or as binding the State of Texas in any way except as to the mortgage of the lands and properties comprising the Palo Duro Canyon State Park and as to the pledge of the revenues and

income thereof as herein provided. Each bond, note or warrant issued hereunder shall contain this clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

**Permissible Provisions in Mortgage**

Sec. 3. The indenture of mortgage given by Texas State Parks Board to secure the payment of the renewed indebtedness may, among other things, provide the following:

(a) For the appointment of a trustee to sell the encumbered properties in event default is made in the payment of any installment of interest or of the principal of any bond, note or warrant secured by such mortgage, or in event any covenant or provision of the mortgage is violated, provided such default or violation has continued for a period of sixty (60) days.

(b) For the appointment of substitute trustees.

(c) For the sale of the encumbered properties by the trustee or substitute trustee in the manner now provided by law for the sale of real property under deed of trust.

(d) For the renewal, extension and preservation of the liens of the deeds of trust and the vendor's lien securing the renewed indebtedness at the time this Act becomes effective, and for the enforcement of the powers of sale under such deeds of trust and the exercise of the right of rescission under the vendor's lien in event either action becomes necessary to protect the rights of the owner and holder of any bond, note or warrant issued hereunder.

**Approval of Bonds; Prima Facie Valid; Defenses**

Sec. 4. The bonds issued hereunder shall be approved by the Attorney General and registered with the Comptroller of Public Accounts. Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. In every action brought to enforce collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity, together with the coupons attached thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

**Entrance Fees; Concessions; Board Created; Income**

Sec. 5. The Texas State Parks Board is further authorized, in a manner not inconsistent with the terms and conditions of the mortgage indenture securing any bonds, notes or warrants issued hereunder, to fix all entrance fees

to be charged for admission to Palo Duro Canyon State Park and all charges to be made and collected from the patrons thereof; to enter into contracts granting concessions in said park; to enter into grazing contracts or leases covering all or any part of the park lands; and to make such other contracts as may be necessary to properly carry out the provisions of this Act. All funds derived from the operation of Palo Duro Canyon State Park as well as all royalties, rentals and bonus money received from the sale of minerals therefrom or lease rentals paid for grazing privileges shall be applied to pay off and discharge outstanding indebtedness or used for maintaining, improving or operating said Park except as hereinafter provided. It is further provided that a Board of three (3) members is hereby created composed of the Commissioner of the General Land Office who shall act as Chairman, the Attorney General of Texas and the Chairman of the State Parks Board. This Board is hereby authorized to execute mineral leases on all lands comprising the Palo Duro Canyon State Park, each lease to provide for a minimum royalty of one-eighth ( $\frac{1}{8}$ ) of all oil, gas or other minerals produced and sold.

The income derived from bonuses, rentals and royalties from such mineral leases shall first be applied to the payment and satisfaction of the indebtedness against the properties comprising Palo Duro Canyon State Park. After such indebtedness has been paid off and discharged, then all of such revenues as the State Parks Board may deem necessary for the improvement, beautification, and usefulness of such Park shall be used by said State Parks Board for that purpose; after which one-half ( $\frac{1}{2}$ ) of the balance of the unexpended revenues may be used by said State Parks Board on other State Parks, and the other one-half ( $\frac{1}{2}$ ), as well as any unexpended balances, shall go to the General Revenue Fund at the end of each biennium.

Sec. 5(a). Repealed by Acts 1967, 60th Leg., p. 1031, ch. 453, § 11.

**Discretion of Parks Board as to Bonds, etc.**

Sec. 6. Subject to the restrictions contained in Sections 1 and 2 hereof, Texas State Parks Board is given full and complete discretion in fixing the form, conditions and details of the bonds, notes or warrants to be issued hereunder, and full and complete discretion in prescribing the terms and conditions of the mortgage indenture to secure the same.

**Lands Included**

Sec. 7. For the purposes of this Act, the Palo Duro Canyon State Park shall include those lands and premises located in Armstrong and Randall Counties, State of Texas, and described in that certain deed executed by Fred A. Emery and wife to Texas State Parks Board, dated July 28, 1933, and recorded in the Deed Records of Randall County, Texas, in Volume 69, pages 347 to 350 thereof.

## Partial Invalidity

Sec. 8. The provisions of this Act are hereby declared to be distinct and separable. If any section, paragraph, sentence or clause hereof shall be found to be invalid by a court of competent jurisdiction, such invalidity shall in no way affect any other provision of this Act.

[Acts 1947, 50th Leg., p. 93, ch. 64, § 1; Acts 1965, 59th Leg., p. 314, ch. 145, § 1; Acts 1967, 60th Leg., p. 1031, ch. 453, § 11, eff. Nov. 11, 1967.]

Repeal of Acts 1965, 59th Leg., p. 314, ch. 145, § 1, adding 5(a) to this article, relating to gate or entrance fees, by Acts 1967, 60th Leg., p. 1031, ch. 453, § 11, to become effective and operative as a law, was conditioned upon adoption by the electors of Const. art. 3, § 49-e, proposed by H.J.R. No. 12 of Acts 1967, 60th Leg., p. 2980. Proposed constitutional amendment was voted on at election held on Nov. 11, 1967, and was approved by the electors. For provisions authorizing the collection of gate or entrance fees, see, now, art. 6070h, § 8.

### Art. 6077j-1. Palo Duro Canyon State Park; Improvements

Authority of State Parks Board; Improvement; Permits

Sec. 1. The Texas State Parks Board<sup>1</sup> is hereby authorized and empowered to make such improvements in Palo Duro Canyon State Park as said Board shall deem desirable. Such improvements may include, but shall not be limited to, the construction of a dam or dams for the purpose of impounding water to form a lake or lakes for recreational and other conservation purposes within the Park, including all appurtenances thereto which said Board may deem advisable. Prior to constructing any dam or lakes the Parks Board shall obtain necessary permit or permits from the State Board of Water Engineers in accordance with the General Law.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

Bonds; Interest Rate; Time for Payment

Sec. 2. Said Board is authorized and empowered to issue its bonds from time to time and in such amounts as it shall consider necessary or appropriate for the construction of the improvements herein authorized. All such bonds shall mature serially or otherwise in not to exceed forty (40) years from their date and may be made redeemable prior to maturity, at the option of the Board, at such times and prices and under terms and conditions as may be prescribed in the authorizing proceedings. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Board to be the most advantageous reasonably obtainable, provided that the interest cost of the money received therefor does not exceed six per cent (6%) per annum, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

Pledge of Rents, Revenues and Income; Deed of Trust Lien

Sec. 3. The Board is authorized and empowered to irrevocably pledge the rents, revenues

and income from the improvements authorized to be constructed herein and to pledge the rents, revenues and income from any other revenue producing facilities and other properties of Palo Duro Canyon State Park, including the fees collected for admission to said Park, to the payment of the interest on and the principal of the bonds authorized to be issued hereunder, and to enter into such agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge and disposition of same as it may deem appropriate. In making such pledge of the rents, revenues and income, the right under the conditions therein specified to issue additional bonds which will be on a parity with or subordinate to the bonds then being issued may be expressly reserved. In the event the Parks Board is unable to sell the revenue bonds after reasonable effort to do so has been made, said bonds (including refunding bonds) may be additionally secured by a deed of trust lien upon the lands and properties comprising the Palo Duro Canyon State Park, or any part thereof, after the Board has obtained the written approval therefor by the Governor of Texas, provided, however, that the Governor shall not give such written approval until he has obtained the advice and consent of the Legislative Budget Board.

Form, Conditions and Details of Bonds

Sec. 4. Subject to the restrictions contained in this Act, the Board is given complete discretion in fixing the form, conditions and details of the bonds authorized to be issued hereunder, and such bonds may be refunded or otherwise refinanced whenever the Board deems such action to be appropriate or necessary.

Refunding or Refinancing Bonds; Additional Parity Bonds

Sec. 5. Any bonds at any time issued by the Board under any Texas Statute, including without limitation, Chapter 64, Acts of 1947, 50th Legislature of Texas, Regular Session (Vernon's Texas Civil Statutes, Article 6077j), and payable from any part of the revenues of any revenue-producing facility, operation, or property of Palo Duro Canyon State Park, may be refunded or otherwise refinanced by the Board pursuant to the provisions of this Act, and in such case all of the provisions of this Act shall be fully applicable to such refunding bonds the same as if the bonds being refunded had been issued originally pursuant to this Act. In refunding or otherwise refinancing any such bonds the Board may, in the same authorizing proceedings, also refund or refinance any bonds issued pursuant to this Act and combine all said refunding bonds and any other additional new bonds to be issued pursuant to this Act into one or more issues or series, and may provide for the subsequent issuance of additional parity bonds, under such terms and conditions as may be set forth in said authorizing proceedings.

Interest and Sinking Fund; Employment of  
Personnel; Fees

Sec. 6. From the proceeds of the sale of any issue of bonds the Board may set aside the payment of interest anticipated to accrue during the construction period and to provide for a deposit into the reserve for the interest and sinking fund to the extent prescribed in the authorizing proceedings. The Board shall have full power to employ such engineers, attorneys, and fiscal agents or financial advisers which in its discretion are necessary in carrying out the objectives of this Act, and proceeds from the sale of the bonds may also be used for the payment of attorney's fees, engineer's fees, and all expenses of the issuance and sale of the bonds, including the fees of fiscal agents or financial advisers.

Legal and Authorized Investments; Security for Deposit  
of Public Funds

Sec. 7. The bonds authorized to be issued hereunder shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for such deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

Negotiable Instruments; Approval of Bonds;  
Registration

Sec. 8. All bonds issued by the Board pursuant to the provisions of this Act shall constitute negotiable instruments within the meaning of the Negotiable Instruments Law of this state. Prior to delivery thereof, all bonds authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the Constitution and this Act, and that they will be binding special obligations of the Board, he shall approve them, and thereupon, they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration, they shall be incontestable.

Debt Against State

Sec. 9. Nothing herein shall be construed as creating a debt against the State of Texas or as binding the State of Texas in any way except as to the mortgage of the lands and properties comprising the Palo Duro Canyon State Park and as to the pledge of the rents, revenues and income thereof, as herein provided.

Partial Invalidity

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Cumulative Effect; Conflicts With Other Laws; Security of Outstanding Bonds

Sec. 11. This Act shall not repeal any Statute now in effect but shall be cumulative of all other Statutes pertaining to the Texas State Parks Board and Palo Duro Canyon State Park, and shall not modify or abridge any rights or powers now held by said Board to control and pledge the rents, revenues and income and properties of Palo Duro Canyon State Park; provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, including Chapter 64, Acts of the Regular Session of the 50th Legislature (Vernon's Texas Civil Statutes, Article 6077j), the provisions of this Act shall take precedence and prevail; and provided further, that this Act shall not in any wise affect the security of any bonds heretofore issued and now outstanding payable from any of the revenues of Palo Duro Canyon State Park.

[Acts 1961, 57th Leg., p. 170, ch. 89.]

4I. NIMITZ-EISENHOWER PARKS

Art. 6077k. Nimitz-Eisenhower Parks

Sec. 1. There is hereby created Nimitz-Eisenhower Parks, one to be located near Lake Texoma in Grayson County and one near Fredericksburg in Gillespie County, upon lands furnished for such purpose by interested persons.

Sec. 2. The State Parks Board<sup>1</sup> is hereby authorized to accept gifts of any nature or kind for the construction, building, advertising or in any manner creating the Nimitz-Eisenhower Parks, and to accept gifts for exhibition, dealing with Texas history or the lives of these men, and to advertise the affairs of said Parks and make rules and regulations for the administration of the affairs, and to hire such personnel upon such terms as seem advisable to carry out the duties in connection with the building, construction or exhibition of historical matters that may be exhibited.

Sec. 3. The State Parks Board is hereby empowered to administer the affairs of said Parks and to grant concessions and otherwise operate and maintain, under regulations for the carrying out of this Act and the laws of this state relative to State Parks, as it may deem necessary, not to conflict with any law.

[Acts 1947, 50th Leg., p. 274, ch. 168.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

4J. PORT ISABEL LIGHTHOUSE

Art. 6077l. Port Isabel Lighthouse; Rehabilitation; Admission Fees

Sec. 1. The State Parks Board<sup>1</sup> is hereby authorized to accept title in behalf of the State

to the Port Isabel Lighthouse and the site on which it is located and that said lighthouse when so acquired be dedicated as a State Historical Monument and Park.

Sec. 2. The State Parks Board is authorized and empowered to rehabilitate, maintain, and preserve said property and collect admission fees from those visiting the site or operate it on a concession basis pursuant to the provisions of Chapter 1 of Title 103 of the Revised Civil Statutes of 1925.<sup>2</sup>

[Acts 1947, 50th Leg., p. 721, ch. 357.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

<sup>2</sup> Article 6067 et seq.

#### 4K. FANNIN STATE BATTLEGROUND

##### Control and Custody

*Control and custody of the Historical State Battleground, San Jacinto Battleground and Fannin State Battleground were transferred from the State Board of Control to the Parks and Wildlife Commission by Acts 1965, 59th Leg., p. 441, ch. 225, § 1. See article 6071b.*

#### Art. 6077m. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965

Article 6077m provided for Fannin State Park Commission, appointment of commissioners, and powers and duties, and was derived from Acts 1947, 50th Leg., p. 959, ch. 414. See, now, art. 6071b, §§ 1, 2.

#### Art. 6077m-1. Change of Name

Secs. 1, 2. [Classified as article 6071a.]

Sec. 3. The name of Fannin State Park, located in Goliad County, Texas, is hereby changed to Fannin State Battleground, and the name of the Fannin State Park Commission now operating the battlefield is hereby changed to Fannin State Battleground Commission.

Sec. 4. Wherever the name Fannin State Park and the name Fannin State Park Commission appear in Statutes of this State, such names and such references shall hereafter mean and apply to Fannin State Battleground and Fannin State Battleground Commission, respectively. All appropriations and benefits to Fannin State Park and Fannin State Park Commission shall be available and apply to Fannin State Battleground and Fannin State Battleground Commission, and all deeds and contracts effected under the old names shall likewise be applicable under the new names.

[Acts 1963, 58th Leg., p. 722, ch. 264, eff. Aug. 23, 1963.]

#### Art. 6077m-2. Fannin State Battleground Advisory Commission

Secs. 1, 2. [Classified as article 6071b.]

Secs. 3, 4. [Classified as article 6071c.]

Sec. 5. (a) The persons who, immediately before the effective date of this Act, were serving as Fannin State Park Commissioners shall, on the effective date of this Act, be the Fannin State Park Advisory Commissioners. The terms of office of the first Fannin State Park Advisory Commissioners expire on the day

their terms would have expired had they remained Fannin State Park Commissioners. The Governor shall appoint the successors to the Fannin State Park Advisory Commissioners for six-year terms of office.

(b) The Fannin State Park Advisory Commission has, for the Fannin State Park, the same powers and functions that the San Jacinto Historical Advisory Board has for the San Jacinto Battleground.

Sec. 6. Authority is granted to establish a Fannin State Concession Account provided funds will be deposited in the State Treasury in accordance to rules and procedures established by the Parks and Wildlife Commission.

Sec. 7. All appropriations heretofore made to the Historical State Battlegrounds, San Jacinto Battleground and Fannin State Battleground, are hereby confirmed in behalf of the Parks and Wildlife Department for said Parks.

Sec. 8. The provisions of this Act do not in any way alter the organization nor reduce the powers or functions of the Battleship Texas Commission.

[Acts 1965, 59th Leg., p. 441, ch. 225, §§ 5 to 8, eff. Sept. 1, 1965.]

#### 4L. INDEPENDENCE STATE PARK

#### Art. 6077n. Independence State Park Created; Lands Set Aside For

Sec. 1. There is hereby created a State Park in Washington County, Texas, to be known as "Independence State Park". There is hereby set aside for the purpose of said Park certain lands situated in the County of Washington, State of Texas, and described as follows:

First Tract: Being one lot of land conveyed by General Sam Houston to H. Clark. Beginning at the North East corner of a 4 acre lot known as the Independence Academy Lot, which is also the North West corner of a tract of land purchased by Sam Houston from James R. Hines. Thence N. 74 E. with North boundary line of said tract of land, 139.32 varas to a stone for the North East corner of this tract. Thence S. 16 E. 54 varas to a stone for the South East corner of this tract. Thence S. 74 W. 139.32 vas. to the East boundary line of the before mentioned Academy lot. Thence N. 16 W. 54 varas with said boundary line, to the place of beginning. Also a strip of land thirty feet in width and one hundred and twenty nine yards in length, lying South and East contiguous to said lot, for the purpose of forming and keeping open perpetually a street on the East and South sides of said lot. But out of the above land is reserved a strip 40 feet wide lying West on the above conveyed property, and being a part of the same, and running the entire length of the West side of said property, for a street for the use of the public perpetually, and being the same tract of land con-

veyed to the State of Texas by a deed now of record in Volume 109, page 517, Deed Records of Washington County, Texas.

Second Tract: Being out of the North side of a tract of land lying just West of the town of Independence, and being out of five tracts of land conveyed by J. Marshall Booker to Mrs. Katie Booker, and recorded in Deed Records of Washington County, Texas, in Vol. 73, page 190. Beginning at the North corner of the original tract, in the street leading to the Old Baylor Female College Property from Independence, and West corner of the Burford tract. Thence with the line between this and the Burford tract, S. 15½ E. 28.8 vas. to a stake for corner. Thence West, parallel with, and 80 feet South of the North line of the original tract, 235 vas. to a stake for corner in the division line between this tract and the McCrocklin tract. Thence with said line, North 28.8 vas. to a stake for corner in street. Thence with center of said street, East 235 vas., to the place of beginning, containing an area of one and 1/10 (1.1) acres of land, eight-tenths of an acre being in the old road, and three-tenths of an acre being inside the field fence. Being the same land described in deed from Mrs. Gertrude McCrocklin to the State of Texas, as shown in Volume 109, page 521, Deed Records of Washington County, Texas.

Third Tract: All that certain tract or parcel of land situated in Washington County, Texas, out of the Saules League, being the property upon which the Old Female College was formerly located, and being the same tract conveyed J. T. Hairston by the Union Baptist Association of Texas, and recorded in Deed Records of Washington County, Texas, in Vol. 62, page 202, and being land inherited by T. C. Hairston as the sole heir at law J. T. and Josephine Hairston, deceased, and described as follows: Beginning at the South West corner of a tract of land formerly known as the Brown Tract in the North East line of the J. P. Cole League. Thence N. 74 E. 150 vas. to the North West corner of the Old Boarding House tract. Thence with the West line of same, and of the land conveyed the state by Mrs. Gertrude McCrocklin, S. 16 E. 150 vas. to a post for corner. Thence S. 74 W. with Mrs. McCrocklin's line, 150 vas. to a stake for corner in the North East line of the J. P. Cole League, the North West corner of the McCrocklin tract. Thence with said League line, N. 16 W. 150 vas. to the place of beginning, containing an area of four (4) acres of land. Being the same land described in deed from Dr. T. S. Hairston and wife to the State of Texas as shown in Volume 117, page 125, Deed Records of Washington County, Texas.

Sec. 2. The said Independence State Park shall be under the jurisdiction, supervision, care and direction of the State Parks Board;<sup>1</sup> and said Parks Board shall have the powers and authority with regard to the management and control of said park as is provided by law with regard to other State Parks, insofar as said power and duties are applicable to the Park herein created.

[Acts 1947, 50th Leg., p. 1040, ch. 450.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6077n-1. Quitclaiming State's Interest in Independence State Park to Baylor University

The Parks and Wildlife Commission may quitclaim all the interest of the State of Texas in Independence State Park, established by Chapter 450, Acts of the 50th Legislature, Regular Session, 1947,<sup>1</sup> and known as the Old Baylor property, to the trustees of Baylor University.

[Acts 1965, 59th Leg., p. 265, ch. 110, § 1, eff. Aug. 30, 1965.]

<sup>1</sup> Article 6077n.

#### 4M. OIL AND GAS LEASES OF PARK LANDS

##### Art. 6077o. Leasing for Oil and Gas

###### Board for Lease of State Park Lands Created

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, one (1) citizen of the state, appointed by the Attorney General with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the chairman of the Parks and Wildlife Commission, who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of State Park Lands." The term "Board" wherever it appears hereafter in this Act shall mean the Board for Lease of State Park Lands. This Board shall keep a complete record in writing of all its proceedings.

###### Authority of Board

Sec. 2. The Board hereinabove created is hereby authorized to lease to any person or persons, firm or corporation subject to, and as provided for in this Act, for prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving and disposing of the oil and/or gas therein to all lands or parcels of same included in the following State Parks, to wit: Abilene State Park, Balmorhea State Park, Bastrop State Park, Bentsen-Rio Grande Valley State Park, Buescher State Park, Big Spring State Park, Blanco State Park, Bonham State Park, Caddo Lake State Park, Cleburne State Park, Daingerfield State Park, Davis Mountains State Park, Fort Griffin State Park, Fort Parker State Park, Old Fort Parker State Park, Frio State Park, Garner State Park, Goose Island State Park, Huntsville State Park, Inks Lake State Park, Jim Hogg State Park, Kerrville State Park, Lake Corpus Christi State Park, Longhorn

Cavern State Park, MacKenzie State Park, Meridian State Park, Mineral Wells State Park, Mother Neff State Park, Palmetto State Park, Palo Duro Canyon State Park, Possum Kingdom State Park, San Jose Mission State Park, Stephen F. Austin State Park, Thirty-sixth Division State Park, Tyler State Park, Independence State Park, Barrada State Park, Jeff Davis State Park, Katemcy State Park, Love's Lookout State Park, Robinson State Park, Tips State Park, Fannin State Park, Goliad State Park, Gonzales State Park, Kings State Park, Governor James Stephen Hogg Memorial Shrine, Lipantitlan State Park, Acton State Park, and Monument Hill State Park.

#### Survey and Subdivision; Abstracts of Title

Sec. 3. The Board is hereby authorized to cause State Park lands to be surveyed and subdivided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of title to such State Park lands, and cause same to be examined by the Attorney General who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchasers of oil and gas leases on said lands.

#### Advertisement for Bids

Sec. 4. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of said land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold, and that sealed bids for the purchase of said oil and/or gas by lease will be opened at designated day, at ten o'clock a. m. that day, and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) By insertion in two or more papers of general circulation in this State.

(b) By mailing a copy thereof to the county clerk and county judge of every county in this State in which an advertised area may be situated.

(c) In addition to the two foregoing the Board may in its discretion cause advertisement to be placed in oil and gas journals in and out of the State, and to be mailed generally to such persons as they think might be interested.

#### Bidding

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office, until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth ( $\frac{1}{8}$ th) of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One Dollar (\$1) per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five (5) years, unless in the meantime production in paying quantities is had upon the land.

#### Payments Accompanying Bids; Requisites of Bids

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for the delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth ( $\frac{1}{8}$ th) of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and in the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

#### Lease or Sale

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, and less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

#### Filing Bids; Discontinuance of Yearly Payments; Termination of Lease

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by

the Board, the yearly payment may be discontinued. If before the expiration of three (3) years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

**Rentals Not Payable During Drilling Operations; Discovery of Oil or Gas**

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same. Failure to comply with the obligations provided by this Section shall subject the holder of the lease to penalties provided in Sections 12 and 13 of this Act.

**Duration of Rights; Assignment; Pipe Lines, Telephone Lines and Roads**

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty (40) acres, unless there be less than forty (40) acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred (100) days after the date of the first acknowledgment thereof, accompanied by ten cents (10¢) per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied with One Dollar (\$1) for each area assigned but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads over State Park Lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

**Payment of Royalty and Bonus; Sworn Statement; Inspection of Books and Accounts**

Sec. 11. Royalty and bonus as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the

State Park Development Fund on or before the last day of each month for the preceding month during the life of the rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools and gas lines or gas storage. The books and accounts, receipts and discharges of oil wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, or any member of the State Parks Board.

**Disposition of Money Received**

Sec. 11a. It is expressly provided, however, that any royalty or bonus derived from those park lands operated by local park commissions with the advice and consent of the Board of Control shall be paid to the General Land Office at Austin, Texas to the credit of the State Park Development Fund, which fund is hereby created. All moneys or sums so deposited to the State Park Development Fund shall be appropriated and expended by the Legislature.

**Protection From Drainage**

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous to or adjacent to land not State Park Land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold at a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

**Forfeiture of Lease; Damages; Specific Performance; Lien of State**

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his

authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty (30) days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty (30) days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area, and upon all rigs, tanks, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of the said lease.

**Filing Papers; Payments; Appropriation and Expenditure**

Sec. 14. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized on State Park Land under the control of State Parks Board, shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all bonus payments and royalty for deposit to the credit of the State Park Development Fund, and all rentals for delay in drilling and all other payments, including all filing assignments and relinquishment fees hereunder to the credit of the State Park Development Fund. All moneys or sums so deposited to the State Park Development Fund shall be appropriated and expended by the Legislature for the development, improvement and maintenance of State Parks.

**Park Lands Operated by Local Park Commissions**

Sec. 14a. Provided, however, that all bonus payments, royalty payments, delay rentals and all other payments paid in connection with park lands operated by local park commissions with the advice and consent of the Board of Control shall be paid to the State Park Development Fund.

**Payment of Expenses**

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand Dollars (\$2,000), or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not

otherwise appropriated until September 1, 1951.

**Partial Unconstitutionality**

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

**Powers of Board**

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

[Acts 1949, 51st Leg., p. 773, ch. 416; Acts 1963, 58th Leg., p. 1138, ch. 442, § 4, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 914, ch. 400, § 8, eff. June 8, 1967.]

**4N. HUNTSVILLE STATE PARK**

**Art. 6077p. Dams and Other Improvements; Sale of Timber**

Sec. 1. The State Parks Board<sup>1</sup> is hereby authorized to repair, build or construct a dam or dams on the rivers or streams running through Huntsville State Park for the purpose of impounding the waters thereof and forming reservoirs or lakes, and other improvements, to be used for recreational and park purposes, and to work in conjunction and cooperation with other governmental agencies in carrying out the purposes of this Act. It is further provided that no such dam shall be built or constructed until after the State Board of Water Engineers has granted a permit therefor. To pay for the repairing, building or construction of such dam or dams or other improvements, the State Parks Board is hereby authorized to sell the timber or any part thereof from the lands comprising said Huntsville State Park and to use whatever amount of said timber is necessary to repair, build or construct the improvements herein authorized; provided, however, that the timber to be sold or used shall be selectively cut under the supervision of the Texas Forest Service; provided further, that the amount of timber to be sold shall not exceed the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Sec. 2. The timber herein authorized to be sold shall be sold on competitive bids, the contract to be awarded to the party or parties who, in the judgment of the Texas Forest Service, has submitted the highest and best bid. Such contract, however, shall not be let until the same has been approved by the State Parks Board. The Texas Forest Service shall advertise for a period of two weeks in at least one weekly newspaper, published and circulated in Walker County, for the sale of such timber or any part thereof, giving the necessary information pertaining thereto, and the time and place for receiving such bids. The first publication

shall be at least ten days before the date of receiving the bids. All such competitive bids shall be kept on file by the Texas Forest Service as part of their records and shall be subject to inspection by anyone desiring to see them. Copies of such bids shall be furnished to the State Parks Board. The Texas Forest Service shall have the right to reject any and all of said bids and readvertise for new bids.

Sec. 3. There is hereby created a special fund to be known as the "Huntsville State Park Building Fund". The moneys derived from the sale of timber cut from the lands of said park shall be placed in the State Treasury to the credit of the above designated fund and shall be expended by the State Parks Board in accordance with the provisions of this Act.

[Acts 1949, 51st Leg., p. 848, ch. 463.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### 40. MISSION STATE FOREST

##### Art. 6077q. Transfer of Title of Agricultural and Mechanical College Lands for Park Purposes

Sec. 1. In order that the improvement program of the Texas State Parks Board<sup>1</sup> may be carried forward in an orderly and expeditious manner, the title to and control of those certain tracts of land aggregating 118 acres, more or less, owned by the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas and now under the jurisdiction and control of the Texas Forest Service, including buildings, structures, improvements and appurtenances, and being the area surrounding and adjoining the Mission San Francisco de los Tejas and known as Mission State Forest near the town of Weches in Houston County, Texas, are hereby transferred and conveyed to the Texas State Parks Board to be known as the Mission San Francisco de los Tejas State Park, said tracts being portions of Hardy Ware Survey, Abstract 1240, situated on the N side of Highway No. 21, about 21 miles NE from the City of Crockett, and being the same tracts of land conveyed to the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas, more particularly described by the following deeds, to-wit:

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated October 16, 1939, recorded in Book 200, page 533, Deed Records of Houston County, Texas;

Deed from Southern Pine Lumber Company, dated September 20, 1935, recorded in Book 170, page 367, Deed Records of Houston County, Texas;

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated February 1, 1935, recorded in Book 166, page 141, Deed Records of Houston County, Texas;

Deed from C. H. Callaway, Trustee, dated January 3, 1935, recorded in Volume

164, page 543, Deed Records of Houston County, Texas.

It is the intention to transfer and convey from the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas to the Texas State Parks Board all of the various tracts of land embraced in the herein described deeds.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

Sec. 2. The Texas State Parks Board is hereby authorized to repair, build or construct facilities, to be used for recreational and other appropriate purposes at Mission San Francisco de los Tejas State Park. The Texas State Parks Board is hereby authorized to sell the timber or any part thereof from the lands comprising said Mission San Francisco de los Tejas State Park and to use whatever amount of said timber is necessary to repair, build or construct the improvements herein authorized; provided, however, that timber shall be cut only for salvage purposes or under good forestry practices with the advice of the Texas Forest Service.

Sec. 3. The timber herein authorized to be sold shall be sold on competitive bids, the contract to be awarded to the party or parties who, in the judgment of the Texas Forest Service, have submitted the highest and best bid. Such contract, however, shall not be let until the same has been approved by the Texas State Parks Board. The Texas Forest Service shall advertise for a period of two (2) weeks in at least one weekly newspaper, published and circulated in Houston County, for the sale of such timber or any part thereof, giving the necessary information pertaining thereto, and the time and place for receiving such bids. The first publication shall be at least ten (10) days before the date of receiving the bids. All such competitive bids shall be kept on file by the Texas Forest Service as part of their records and shall be subject to inspection by anyone desiring to see them. Copies of such bids shall be furnished to the Texas State Parks Board. The Texas Forest Service shall have the right to reject any and all of said bids and re-advertise for new bids.

Sec. 4. There is hereby created a special fund to be known as the "Mission San Francisco de los Tejas State Park Building Fund". The moneys derived from the sale of timber cut from the lands of said park shall be placed in the State Treasury to the credit of the above designated fund and shall be expended by the Texas State Parks Board in accordance with the provision of this Act.

[Acts 1957, 55th Leg., p. 1376, ch. 470.]

#### 4P. HUECO TANKS STATE PARK

##### Art. 6077r. Hueco Tanks State Park

Sec. 1. The State of Texas is hereby authorized to accept title to the lands described as the Hueco Tanks in El Paso County, subject, however, to whatever reservations, conditions or exceptions that the legal owner or owners

may make and with the approval thereof by the State Parks Board.<sup>1</sup>

Sec. 2. The land and grounds known as the Hueco Tanks shall be known and styled "Hueco Tanks State Park," and shall be under the care and direction of the State Parks Board, which shall endeavor to improve, preserve, restore and protect the lands and property within the Hueco Tanks State Park.

Sec. 3. After acceptance of title to Hueco Tanks as hereinbefore provided, the State Parks Board is hereby authorized to accept gifts of any nature or kind for constructing, building, advertising or in any manner creating the Hueco Tanks State Park, including the placing of game and fish therein and accepting gifts for public exhibition which deal with Texas history and the history of the Hueco Tanks.

[Acts 1957, 55th Leg., 1st C.S., p. 2, ch. 2.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### 4Q. GENERAL IGNACIO ZARAGOZA STATE PARK

##### Art. 6077s. General Ignacio Zaragoza Birthplace

Sec. 1. That the County of Goliad is authorized to convey to the State Parks Board<sup>1</sup> of the State of Texas, and the State Parks Board is authorized to accept on behalf of the State of Texas title to approximately two (2) acres of land, more or less, and more particularly described as Lots 4, 5, 6, 11, 12, 13, 14, 15, and 16 in Block X, La Bahia Townsite, in Goliad County, and being the area surrounding and adjoining the site of the birthplace of General Ignacio Zaragoza, who led the armies of the Republic of Mexico in defeating the forces of Napoleon III on May 5, 1862; provided, however, that in such conveyance there shall be a provision to the effect that if this land is not utilized as provided for in this Act, it shall revert to the County of Goliad.

Sec. 2. The Parks and Wildlife Department is authorized to care for and protect said area surrounding and adjoining the site of the birthplace to be called the "General Ignacio Zaragoza Birthplace" as a part of Goliad State Park, and to construct, maintain and repair historical and recreational structures and facilities therein.

[Acts 1961, 57th Leg., p. 584, ch. 276; Acts 1971, 62nd Leg., p. 2256, ch. 690, § 1, eff. June 4, 1971.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### 4R. PADRE ISLAND NATIONAL SEASHORE

##### Art. 6077t. Padre Island National Seashore Area

Sec. 1. The surface estate of that part of the following described lands situated in Kleberg, Kenedy, and Willacy Counties, Texas, to which the State of Texas has title or that have been acquired or that may become vested under any previous Act or Acts, shall be and is hereby established, dedicated and set apart as a

public park for the benefit and enjoyment of the people. The surface estate in the following described lands shall be designated as the "Padre Island National Seashore," which area is described as follows:

BEGINNING at a point one statute mile North of the North end of North Bird Island on the easterly line of the Intracoastal Waterway;

THENCE due East to a point on Padre Island one statute mile West of the mean high water line of the Gulf of Mexico;

THENCE southwesterly paralleling the said mean high water line of the Gulf of Mexico a distance of three and five-tenths statute miles;

THENCE due east to the two-fathom line on the east side of Padre Island as depicted on United States Coast and Geodetic Survey chart numbered 1286;

THENCE along the said two-fathom line on the east side of Padre Island as depicted on United States Coast and Geodetic Survey charts numbered 1286, 1287, and 1288 to the Willacy-Cameron County line extended;

THENCE westerly along said county line to a point 1,500 feet west of the mean high water line of the Gulf of Mexico as that line was determined by the survey of J. S. Boyles and is depicted on sections 9 and 10 of the map (on file in the General Land Office) entitled "Survey of Padre Island made for the office of the Attorney General of the State of Texas", dated August 7 to 11, 1941, and August 11, 13, and 14, 1941, respectively;

THENCE northerly along a line parallel to and 1,500 feet west of said survey line of J. S. Boyles, to a point on the centerline of the Port Mansfield Channel;

THENCE westerly along said centerline to a point three statute miles west of the said two-fathom line;

THENCE northerly parallel with said two-fathom line to a point on 27 degrees 20 minutes north latitude;

THENCE west along said latitude to the easterly line of the Intracoastal Waterway;

THENCE northerly following the easterly line of the Intracoastal Waterway as indicated by channel markers in the Laguna Madre to the point of BEGINNING.

##### Boundary Line With Privately-Owned Land

Sec. 1a. Nothing in this bill is intended to extend any recognition to any particular line as being the boundary line between the state-owned portion of the seashore and the privately-owned land.

##### Withdrawal of Surface Estates From Sale

Sec. 2. The Legislature of the state of Texas hereby withdraws from sale the surface estates of all state-owned lands in said area re-

ardless of the purpose or purposes for which they are held and regardless of the instrumentality of the state for which they are held.

Deed of Conveyance; Consideration; Execution; Jurisdiction; Reservation; Mineral Interests

Sec. 3. The United States of America through the Secretary of Interior is granted permission, subject to the limitations contained in this Act, to acquire the area that has been defined as Padre Island National Seashore and the School Land Board of the State of Texas is hereby authorized and directed forthwith to execute a deed of conveyance to the United States of America conveying all of the right, title and interest of the State of Texas in the surface estate of all lands described in Section 1 hereof, subject to the exceptions and reservations hereinafter set forth under the terms of this Act, for the Padre Island National Seashore for the use of the public as a recreation area, in consideration of the United States of America agreeing to establish and maintain the land described in Section 1 hereof as a National Seashore area, as provided for under an Act of Congress, being Public Law 87-712, enacted by the 87th Congress of the United States, and to cede to the United States of America jurisdiction over said lands, and including lands acquired under Section 6 hereof, in conformity with the provisions of Article 5247, Revised Civil Statutes of Texas 1925. Said deed shall be executed by a majority of the then members of the School Land Board and shall also reserve to the State of Texas the right of concurrent jurisdiction with the United States of America, both civil and criminal, over every portion of the lands described in Section 1 hereof, so that all process, civil and criminal, issuing under the authority of this state or any of the courts or judicial officers thereof, may be executed by the proper officers of the state, upon any person amenable to the same within the limits of the land constituting the "Padre Island National Seashore," as set out in Section 1 hereof, in like manner and like effect as if no such cession had taken place; and, reserving further to the state the right to levy and collect taxes on sales, use or gross receipts from sales of products or commodities upon which a tax is levied in this state, and to tax persons and corporations, their franchises, properties and incomes, on land or lands conveyed under the terms of this Act; and reserving also, to persons residing in or on any of the land or lands conveyed, the right to vote at all elections within the counties in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such counties had not such lands been conveyed as aforesaid to the United States of America.

Said state land shall not be conveyed unless the entire mineral interest is reserved in the state, and unless the right of occupation and use of so much of the surface of the land or waters as may be required for all purposes rea-

sonably incident to the mining, development, or removal of the minerals, is adequately protected.

In all conveyances of said park property under Sections 3 and 6 hereof to the United States of America, the Secretary of the Interior shall permit a reservation by the grantor of all oil, gas, and other minerals in such land or waters with the right of occupation and use of so much of the surface of the land or waters as may be required for the purposes of reasonable development of oil, gas and other minerals, under such rules and regulations as may be established by the Railroad Commission of the State of Texas. The Railroad Commission shall submit a copy of any proposed rules and regulations affecting the National Seashore area to the United States Department of Interior, Washington, D. C., by certified mail. The Department of Interior shall have thirty (30) days from receipt thereof to submit, by certified mail, to the Railroad Commission of Texas, any objection or exceptions to such proposed regulations. Thereupon, such rules and regulations, with amendments, if any, promulgated by the Railroad Commission of Texas, shall become effective. It is the intention of the Legislature of the State of Texas that the use of said land for this purpose be carried out in such a manner as to not unreasonably interfere with the use of said land for park purposes.

#### List of Lands Owned by State

Sec. 4. The Commissioner of the General Land Office shall prepare a list of the lands now owned in said area by the State of Texas or its instrumentalities for any purpose and deliver a certified copy of such list to the School Land Board for its records.

#### Suit to Enlarge Title Granted by Deeds

Sec. 5. Any deed executed pursuant to the authority hereinabove set out shall be null and void and of no force and effect and any and all rights, titles, and interests granted and conveyed thereby shall revert to the State of Texas upon the initiation by any agent, agency, officer, department, or employee of the Federal Government of the United States, whether appointed or elected, of a suit at law or in equity in any Federal Court of the United States to enlarge or expand the titles, rights, or interests granted by said deed or deeds.

#### Acquisition of Surface Estate of Land Not Owned by State; Reservations and Regulations

Sec. 6. The United States of America, through the Secretary of the Interior, is hereby authorized to purchase, condemn, receive, hold and acquire title to the surface estate of any land not owned by the state in the area above-described as the Padre Island National Seashore for use as a recreational park; provided that the acquisition of lands in such area shall not deprive the grantor or successor in title of the right of ingress and egress for the purpose of exploring for, developing, processing, storing and transporting minerals from be-

neath said lands and waters with the right of housing employees for such purposes. The same reservations and regulations enumerated in Section 3 hereof, relating to civil and criminal jurisdiction, process, levy and collection of taxes, mineral development, and voting rights, shall apply to all lands acquired by the United States of America under this Section.

Surface Estate and Interests of Willacy County  
Navigation District

Sec. 7. The surface estate in and to the lands, spoil banks, easements or rights-of-way owned, leased or otherwise controlled by the Willacy County Navigation District may be acquired for inclusion in Padre Island National Seashore with the consent of the District. All such surface estates in and to lands, spoil banks, easements and rights-of-way owned, leased or otherwise controlled by the Willacy County Navigation District located in the Padre Island National Seashore shall be used solely for public purposes.

Roadways

Sec. 8. The Secretary of the Interior is requested to provide for roadways from the north and south boundaries of such public recreation area to the access highways from the Mainland to Padre Island. For the purpose of this Section, the south boundary shall be considered the Port Mansfield cut.

Reversion

Sec. 9. If the United States of America (1) fails to acquire the surface estate in two-thirds of the total privately-owned land located within the Padre Island National Seashore Area as defined in Section 1 of this Act within ten (10) years from the date of acquisition by the United States of America of the state-owned portion of the land described in Section 1 hereof, or (2) after such ten-year period ceases to use the surface estate of the privately-owned land so acquired under the authority of this Act for a national seashore area as contemplated herein, then in either event, all state-owned lands conveyed to the United States of America under the authority of Section 3 hereof shall ipso facto and without further action by any of the parties hereto revert to the State of Texas and to the fund to which they belonged prior to the passage of this Act, unless such reversion shall be waived by the Legislature of the State of Texas during the biennium following the happening of either of the conditions of reversion.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Conflicting Laws

Sec. 11. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. [Acts 1963, 58th Leg., p. 56, ch. 38, eff. Aug. 23, 1963.]

4S. GUADALUPE MOUNTAINS  
NATIONAL PARK

Art. 6077u. Creation of Guadalupe Mountains  
National Park

Setting Aside Mineral Estate for Park Purposes; Area

Sec. 1. The mineral estate of that part of the following lands situated in Culberson and Hudspeth Counties, Texas, to which the State of Texas has title, is hereby set aside for park purposes only, to be used as part of the "Guadalupe Mountains National Park." The park area is shown on the drawing entitled "Proposed Guadalupe Mountains National Park, Texas," numbered SA-GM-7100C, and dated February 1965, which is on file and available for public inspection in the offices of the National Park Service, Department of the Interior, Washington, D. C., and the Secretary of the State of Texas.

Conveyance of Mineral Estate; Concurrent Jurisdiction

Sec. 2. The United States of America through the Secretary of the Interior is granted permission, subject to the limitations contained in this Act, to acquire the area that has been defined as Guadalupe Mountains National Park, and the School Land Board of the State of Texas shall execute a deed of conveyance to the United States of America conveying all of the right, title and interest of the State of Texas in the mineral estate of all lands described in Section 1 of this Act, for the Guadalupe Mountains National Park, to be used by the public as a recreational area, in consideration of the United States of America agreeing to establish and maintain the land described in Section 1 of this Act as a National Park area, as provided for under an Act of Congress, Public Law 89-667<sup>1</sup> enacted by the 89th Congress of the United States, and to cede to the United States of America jurisdiction over the lands, in conformity with the provisions of Article 5247, Revised Civil Statutes of Texas, 1925. The deed shall be executed by a majority of the then members of the School Land Board and shall also reserve to the State of Texas the right of concurrent jurisdiction with the United States of America, both civil and criminal, over every portion of the lands described under Section 1 of this Act, so that all process, civil and criminal, issuing under the authority of this state or any of the courts or judicial officers thereof, may be executed by the proper officers of the state, upon any person amenable to the same within the limits of the land constituting the Guadalupe Mountains National Park, as set out in Section 1 of this Act, in like manner and like effect as if no cession had taken place; and, reserving further to the state the right to levy and collect taxes on

sales, use or gross receipts from sales of products or commodities upon which a tax is levied in this state, and to tax persons and corporations, their franchises, properties and incomes, on land or lands conveyed under the terms of this Act; and reserving also, to persons residing in or on any of the land or lands conveyed, the right to vote at all elections within the counties in which the land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in the counties had not the lands been conveyed to the United States of America; and reserving also the rights set out in Section 7 of this Act.

<sup>1</sup> See 16 U.S.C.A. §§ 283 to 283e.

#### List of Lands; Copy for School Land Board

Sec. 3. The Commissioner of the General Land Office shall prepare a list of the lands in the area described in Section 1 of this Act, the mineral rights of which are owned by the State of Texas or its governmental subdivisions for any purpose, and deliver a certified copy of the list to the School Land Board for its records. Provided, however, that no employee of the State of Texas at the time of the introduction of this bill shall receive any compensation or commission from the sellers for the sale of this land.

#### Transfer of Funds

Sec. 4. The Treasurer of the State of Texas shall transfer from the General Revenue Fund to the Public School Permanent Fund for conveyance the amount of \$5 per acre, the funds to be taken from appropriations that may be hereafter made for this purpose.

#### Severability

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

#### Repeal of Conflicting Laws

Sec. 6. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of conflict only.

#### Right of Reverter; Reservations

Sec. 7. (a) Should any or all of the lands described in Section 1 of this Act cease to be used for the purpose of Guadalupe Mountains National Park, the State of Texas reserves its preferential right to a reconveyance, without consideration, of the mineral rights donated by the State of Texas under this Act.

(b) If at any time in the future an Act of Congress provides that the national welfare or an emergency requires the development and production of the minerals underlying the lands within the boundaries of the national park, or any portion thereof, and such Act authorizes the United States Secretary of the Interior to lease said land for the purpose of

drilling, mining, developing, and producing said minerals, the State of Texas reserves the preferential right, without consideration to the United States, to lease all of the mineral rights and interests which were donated by the State of Texas under this Act.

(c) If at any time oil, gas, or other minerals should be discovered and produced in commercial quantities from lands outside the boundaries of the park, thereby causing drainage of oil, gas, or other minerals from lands within the boundaries of the park, and if the Secretary of the Interior participates in a communitization agreement or takes other action to protect the rights of the United States, the State of Texas reserves the right to its proper share of the proceeds, if any, derived from such agreement or action; said proper share to be not less than all bonuses, rentals, and royalties attributable to all minerals and mineral rights to be conveyed to the United States of America under the terms of this Act.

[Acts 1967, 60th Leg., p. 26, ch. 8, eff. March 6, 1967.]

## 5. COUNTY PARKS

### Art. 6078. Tax for Parks

Sec. 1. Each Commissioners Court is authorized to levy and collect a tax not to exceed five (5) cents on each one hundred dollars assessed valuation of the county for the purchase and improvement of lands for use as county parks. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property taxpaying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks, they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe.

Sec. 2. All parks acquired by authority of this Act shall be under the control and management of the county acquiring the same, provided that the Commissioners Court may by agreement with the State Parks Board<sup>1</sup> turn the land over to the State Parks Board to be operated as a public park; the expense of the improvement and operation of such park to be paid by the county and/or cooperative Federal agencies according to the agreement to be made between such county and the State Parks Board.

Sec. 3. If any section, subsection, paragraph, sentence, clause, or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other portion of this Act or the application of such section, subsection, paragraph, sentence, clause, or provision to any other person or situation, but this Act shall be construed and enforced as if such invalid provisions had not been contained therein.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 437, ch. 270, § 1.]

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Art. 6078a. Abandonment of County Parks

If any parcel of land shall have been dedicated as such county park which may be undesirable for park purposes, the County Commissioners Court of such county, upon the application of any person, or upon its own motion shall hold a hearing to determine whether said parcel of land shall be closed and abandoned as a park. Notice of the time and place of such hearing and of the issues to be determined shall be published in the English language once a week for three (3) consecutive weeks preceding such hearing in some newspaper published in said county. The first of said publications shall appear not less than twenty-one (21) days immediately preceding the date set for such hearing. Said notice shall contain a brief description of such parcel of land and shall state that at such hearing such County Commissioners Court will determine whether or not such parcel of land shall be closed and abandoned as a park, and shall direct all persons interested to appear at the time and place of such hearing to contest the closing and abandonment of such parcel of land as a park if they desire to do so. If there be no newspaper published in the county, the County Commissioners Court shall then post such notice in writing at the Courthouse door of such county, for at least twenty-one (21) days successively next before the date set for such hearing.

At such hearing said County Commissioners Court shall hear evidence as to whether such parcel of land is desirable for park purposes, and shall make a full investigation as to whether the public interest would be better served by the retention and maintenance of said parcel of land as a county park or by closing and abandoning such parcel of land as a park, and, after such hearing, such County Commissioners Court shall enter an order in its minutes, either retaining said parcel of land as a park or closing and abandoning the same as such, according to its determination as to the best public interest.

Should said order direct the closing and abandonment of such parcel of land as a park, such previous dedication thereof shall cease, terminate and expire and the owner of such parcel of land shall thereafter hold the unencumbered fee simple title thereto, free and clear of such dedication. Provided said owner shall pay all taxes due the State and/or any

subdivision thereof at the time said property was conveyed to the county for park purposes. [Acts 1935, 44th Leg., p. 376, ch. 138, § 1.]

#### Art. 6079. Privileges and Concessions

No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent, paying for such privilege or concession the sum agreed upon with said court or its duly authorized agent. All revenue from the sale of such privileges or concessions shall go into a fund for the maintenance of said parks. [Acts 1925, S.B. 84.]

#### Art. 6079a. [Blank]

#### Art. 6079b. County Parks in Counties of Under 80,000

In counties owning and maintaining county parks, and having a population of less than 80,000 inhabitants according to the last preceding Federal Census, the Commissioners Court is authorized to maintain and operate said parks; provided that the Commissioners Court shall not expend more than \$15,000 in any one year for the maintenance and operation of said parks and construction within said parks. It is provided, however, that in any county which has voted and issued bonds for park purposes, the Commissioners Court may expend such amount in addition thereto as it finds necessary properly to maintain and operate its park or parks.

[Acts 1945, 49th Leg., p. 658, ch. 365, § 1; Acts 1955, 54th Leg., p. 369, ch. 88, § 1; Acts 1957, 55th Leg., 1st C.S., p. 98, ch. 33, § 1; Acts 1973, 63rd Leg., p. 358, ch. 156, § 1, eff. May 23, 1973.]

#### Art. 6079c. Parks in Counties on Gulf Having Suitable Island, Islands, or Part of Island

##### Application of Law

Sec. 1. The provisions of this Act are applicable to all eligible counties. An "Eligible" County is one which borders on the Gulf of Mexico within whose boundaries is located any island, part of an island, or islands, suitable for park purposes. The suitability of such island, islands, or part of an island for park purposes shall be conclusively established when the Commissioners Court of such County shall have made a finding in an order passed by it that such island, islands, or part of island is or are suitable for park purposes.

##### Creation of Board; Powers

Sec. 2. Any Eligible County, for the purpose of improving, equipping, maintaining, financing, and operating any such public parks or park, owned by such county, may by order passed by the Commissioners Court create a Board to be designated "Board of Park Commissioners," hereinafter sometimes in this Act referred to as the "Board." Any such Board

shall have the powers authorized in and shall perform the duties specified in this Act.

**Personnel of Board; Compensation; Expenses**

Sec. 3. The Board of Park Commissioners shall be composed of seven (7) members. When the Commissioners Court of any such county adopts a resolution as aforesaid then the County Judge of such county shall appoint, subject to the approval of the Commissioners Court, seven (7) persons as members comprising the Board of Park Commissioners for such county. Such Commissioners shall serve for a term of two (2) years from the date of their appointment; in the event of any vacancy the County Judge shall fill said vacancy by appointment for the unexpired term. No Park Commissioner may be an officer or employee of the county for which the Board of Park Commissioners is created, or an officer or employee of any incorporated city located in said county. A Park Commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any such Commissioner, executed by the County Judge and attested by the County Clerk and ex officio Clerk of the Commissioners Court of such county, shall be filed with the County Clerk and such certificate shall be conclusive evidence of the due and proper appointment of such Commissioner. Each Commissioner of said Board of Park Commissioners shall annually receive as compensation Fifteen Dollars (\$15) for each meeting attended for the first fifty-two (52) meetings held during a calendar year, but shall receive no compensation for any additional meetings held during such calendar year. Each Commissioner shall be compensated for all necessary expenses, including traveling, incurred in performing their duties as Park Commissioners; when an account shall have been thus approved it will be paid in due time by the Board's check or warrant.

**Oath and Bond**

Sec. 4. Each Commissioner so appointed shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk of such County, payable to the order of the County Judge of such County, and approved by the Commissioners Court. Such bond shall be in the sum prescribed theretofore by the Commissioners Court of such County, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Park Commissioner; the cost of said bonds shall be paid by the Board.

**Powers Vested in Commissioners; Quorum; Necessary Vote; Officers; Meetings; Funds**

Sec. 5. The powers under this Act shall be vested in the Board of Park Commissioners as

constituted from time to time. Four (4) Commissioners shall constitute a quorum of the Board for the purposes of conducting its business and exercising its powers, and for all other purposes. The action of the Board may be taken by a majority vote of the Commissioners present. At the time of the appointment of the first Commissioners in any such County, the appointing power shall designate one (1) of the Commissioners as Chairman of the Board, who shall serve in that capacity until the expiration of the term for which he was appointed (or within such period until he may have vacated his office as a Commissioner), thereafter the Board shall elect a Chairman from among its Commissioners. The Board shall elect from among its own members a Vice-chairman, a Secretary, and a Treasurer. The office of Secretary and Treasurer may be held by the same person, and in the absence or unavailability of either the Secretary or the Treasurer in the event two (2) persons are holding said positions the other such officer may act for and perform all of the duties of such absent or unavailable officer during such period of absence or unavailability. The Board shall hold regular meetings at times to be fixed by the Board and may hold special meetings at such other times as the business or necessity may require. The money belonging to or under control of the Board shall be deposited and shall be secured substantially in the manner prescribed by law for county funds.

**Depositories; Warrants or Checks; Employees and Agents; Legal Services; Seal**

Sec. 6. The depository or depositories for such funds shall be selected by the Board. Warrants or checks for the withdrawal of money may be signed by any officer of the Board and one (1) other Commissioner or, when duly designated by resolution entered in the minutes of the Board, by two (2) bonded employees of the Board. The Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties, and compensation. In addition the Board may also employ and compensate a manager for any park or parks and may give him full authority in the management and operation of the park or parks subject only to the direction and orders of the Park Board. For such legal services as it may require the Board of Park Commissioners may call upon the County Attorney of such County, and in lieu thereof or in addition thereto the Board may employ and compensate its own counsel and legal staff. The Board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on such other instruments as may be required by the Board.

**Personal Interest**

Sec. 7. No Commissioner or employee of the Board shall acquire any pecuniary interest,

direct or indirect, in any improvements, concessions, equipment or any business located within the confines of any public park administered by such Board, nor shall he have any interest, direct or indirect, in any contract or proposed contract for construction, materials or services in connection with or related to any park under control of the Board.

#### Records

Sec. 8. The Board of Park Commissioners shall keep a true and full account of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fire proof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the Commissioners Court at all reasonable times during office hours on business days.

#### Contracts, Leases and Agreements; Particular Purposes; Disbursement of Funds

Sec. 9. Such Board shall have full and complete authority to enter into any contract, lease or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any park or parks under its control. It shall also have authority to disburse and pay out all funds under its control for any lawful purpose for the benefit of any such park or parks.

#### Contracts, Leases and Agreements Necessary and Convenient

Sec. 10. Such Board shall have general power and authority to make and enter into all contracts, leases and agreements which said Board shall deem necessary and convenient to carry out any of the purposes and powers granted in this Act. Any such contract, lease or agreement may be entered into, without advertisement, with any person, real or artificial, any corporation, municipal, public or private, any governmental agency or bureau, including the United States Government and the State of Texas, and may make contracts, leases, and agreements, with any such person, corporation, or entities for the acquisition, financing, construction or operation of any facilities in, connected with or incident to any such park. Any and all contracts, leases and agreements herein authorized, to be effective, shall be approved by resolution of the Board and shall be executed by its Chairman or Vice-chairman and attested by its Secretary or Treasurer.

#### Suits

Sec. 11. Such Board shall have the right to sue and be sued in its own name.

#### Revenue Bonds

Sec. 12. (a) For the purpose of providing funds for the acquisition of any permanent improvements to such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to any such park or parks, or for any

one or more of such purposes, the Board shall have the power from time to time and is hereby authorized by resolution (hereinafter sometimes called the "Resolution"), to procure the issuance of revenue bonds, hereinafter sometimes called the "Revenue Bonds," which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law<sup>1</sup> and all other laws of Texas. Included but without limiting, among the permanent improvements and facilities which may be acquired through the issuance of Revenue Bonds are the following: bath houses, bathing beaches, swimming pools, pavilions, auditoriums, coliseums, stadia, athletic fields, golf courses, buildings and grounds for assembly, entertainment, health and recreation, restaurant and refreshment places, yacht basins, and landing strips and ports for aircraft. Provided that no Revenue Bonds shall be issued under authority of such Resolution unless and until said Resolution shall have first been approved by the Commissioners Court of such County, evidenced by an order to that effect. Such Revenue Bonds shall be issued in the name of such County, signed by the County Judge and attested by the County Clerk and Ex Officio Clerk of the Commissioners Court of said County. They shall have impressed thereon the seal of the Commissioners Court of said County, shall mature serially or otherwise in not to exceed forty (40) years and may be sold by the Board at a price and under terms determined by the Board to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Resolution authorizing the issuance of the bonds, rendered effective by the approving order of the Commissioners Court shall prescribe the details as to the Revenue Bonds. It may contain provisions for the calling of the Revenue Bonds for redemption prior to their respective maturity dates at such prices and at such times as may be prescribed in such Resolution, but except for such rights of redemption expressly reserved in the Resolution and in the Revenue Bonds they shall not be subject to redemption prior to their scheduled maturity date or dates. The bonds may be made payable at such times and at such places, within or without the State of Texas, as may be prescribed in the Resolution, and they may be made registerable as to principal, or as to both principal and interest.

(b) The Revenue Bonds may be issued in one or more series from time to time as required for carrying out the purposes of this Act.

(c) The bonds may be secured by a pledge of all or a part of the Net Revenues (as defined in Section 12(d) hereof) from the operation of such park or the parks, or the facilities thereof and incident thereto, or by a pledge of the net revenues both from said park or parks and said

facilities, or any one or more thereof. The net revenues of any one or more contracts, operating contracts, leases, or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional security, for the support of the bonds. Any other revenue specified in the Resolution of the Board may be pledged as the principal or as additional security for the bonds. In any such Resolution the Board may reserve the right under conditions therein specified to issue additional bonds which will be on a parity with, or subordinate to the bonds then being issued.

(d) The term "Net Revenues" as used in this Section and in this Act shall mean the gross revenues from the operation of the park or the parks, and the facilities thereof, leases, agreements and contracts, and incidents thereto, or from any one or more thereof, whose revenues shall have been thus pledged, after deduction of the necessary expenses as defined in Section 14 hereof.

(e) From the proceeds of the Revenue Bonds the Board may set aside, as shall be prescribed in the Resolution, an amount for payment of interest estimated to accrue during the construction period and in addition thereto such reserve for the interest and sinking fund as may be deemed proper. From the proceeds of the Revenue Bonds all expenses necessarily incurred in issuing and in selling the Revenue Bonds shall be paid. The remainder of such proceeds shall be used for the purposes specified in the Resolution, and comprehended by the purposes permitted under Section 12(d) of this Act.

(f) Said bonds shall never be construed to be a debt of the County or the State of Texas within the meaning of any constitutional or statutory provisions, but shall be payable solely and only from the revenues pledged to their payment as herein provided. Each Revenue Bond shall contain on its face substantially the following provisions:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

No such bonds shall ever be a debt of such County, but solely a charge upon the pledged revenues. Such bonds shall never be reckoned in determining the power of the County to incur obligations payable from taxation.

(g) So long as any of the Revenue Bonds are outstanding no additional bonds of equal dignity shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Resolution.

(h) Before any such bonds are delivered to the purchaser they shall be submitted to the Attorney General along with the record pertaining thereto for his examination and approval. It shall be the duty of the Attorney General to approve the Revenue Bonds when issued in accordance with this Act. Bonds thus approved by the Attorney General and regis-

tered within the office of the Comptroller of Public Accounts shall be incontestable.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### Revenue and Refunding Bonds; Covenants as to by Commissioners Court Order

Sec. 12a. Notwithstanding any of the provisions of this law the Revenue Bonds permitted by Section 12 hereof to be issued, or the refunding bonds permitted by Section 13 hereof to be issued, shall be authorized by an order passed by the Commissioners Court of the county, on its own motion, and by such order said Court may make such covenants on behalf of the county as it may deem necessary and advisable, and said Court shall perform or cause to be performed any covenants thus made. The provisions of this section shall take precedence over any other provisions of this law that may be in conflict herewith or contrary thereto.

#### Refunding Bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable, may be issued by Resolution first adopted by the Board and thereafter approved by order of the Commissioners Court of such County for the purpose of refunding bonds issued under this Act. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. No election shall be required for the issuance either of the bonds or of any refunding bonds. Such refunding bonds may be sold and the proceeds used to retire the original bonds, or may be issued in exchange for the original bonds, as may be provided in the resolution authorizing their issuance.

#### Expenses; Fees and Tolls

Sec. 14. (a) The expense of operation and maintenance of facilities whose revenues are pledged to the payment of bonds shall always be a first lien on and charge against the income thereof. So long as any of said bonds or interest thereon remain outstanding the Board shall charge or require the payment of fees and tolls for the use of such facilities which shall be equal and uniform within classes defined by the Board and which shall yield revenues at least sufficient to pay the expenses of such operation and maintenance, and to provide for the payments prescribed in the Resolution for "Debt service" as that term may be defined in the Resolution (which without limitation may include provisions for any or all of the following: the payment of principal and interest as such principal and interest respectively mature, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve).

(b) The Board is authorized to determine the rates, charges and tolls which must be charged by it and by those, if any, having operating or lease contracts whose revenues are pledged with the Board for the use of such facilities

and for the services to be rendered by such facilities.

Provisions Applicable to Bonds

Sec. 15. The following provisions shall be applicable as to Revenue Bonds issued under this Act:

(a) It shall be the duty of the Board to fix such tolls and charges for the use of the facilities whose revenues are thus pledged as will yield revenues fully sufficient to operate and maintain such facilities and to permit full compliance by the Board with the covenants contained in the Resolution for the making of payments into the Debt Service Fund, including payments into any reserve accounts or funds created in the Resolution in connection with the issuance of the Bonds. In the event that any part of the security for the Revenue Bonds consists of money to be received by the Board as consideration for facilities belonging to the Board but operated by another or others under some form of lease or operating contract, it shall be the duty of the Board to fix and authorize rates, charges and tolls to be made by such person or persons for services to be rendered by such facilities, at least sufficient to assure the receipt by the Board of money which the Board is committed to pay from such source for Debt Service under the terms of the Resolution.

(b) The proceeds of the bonds shall be used and shall be disbursed under such restrictions as may be provided in the Resolution, and there shall be and there is hereby created and granted a lien upon such moneys, until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such bonds, but neither the depository of such funds nor the trustee shall be obligated to see to the proper application of such fund except as expressly provided in the Resolution or in the indenture securing the bonds. Any surplus remaining from the bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Resolution, and the creating of any reserve fund prescribed in the Resolution, shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder after such purchase to be deposited in the fund established in the Resolution for debt service.

(c) The Resolution may provide that such Revenue Bonds shall contain a recital that they are issued pursuant to and in strict conformity with this Act and such recital when so made shall be conclusive evidence of the validity of the Revenue Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be ex-

empt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district of the State.

(e) If so provided in the Resolution an indenture securing the bonds may be executed by and between the County and a corporate trustee, and such Resolution may provide also for execution of the indenture by a corporate or an individual cotrustee. Any such corporate trustee or corporate cotrustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Resolution or such indenture may contain such provisions for protecting or enforcing the rights or remedies of the bondholders as may be considered by the Board reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in reference to maintenance, operation or repair, and insurance (including within the discretion of the Board insurance against loss of use and occupancy) of the facilities whose revenues are pledged, and the custody, safeguarding and application of all moneys received from the sale of the Revenue Bonds, and from revenues to be received from the operation of the project.

(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds of the bonds or revenues derived from the operation of facilities whose revenues may be pledged, or for the special funds created to assure payment of principal and interest on the Revenue Bonds, including reserve funds and accounts, or for one or more of such classes of deposits, and to furnish such indemnity bonds or to pledge such securities as may be required by the Board.

(h) The Board may select such depository or depositories without the necessity of seeking competitive bids. Such deposits shall be secured in the manner required by law for the security of money belonging to counties. Provided that the Board in the Resolution or the indenture securing the Revenue Bonds may bind the Board to the use of direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government as security for such deposits. Such indenture, or ordinance, may set forth the rights and remedies of the bondholders and of the Trustee and may restrict the individual rights of action of the bondholders. The Resolution may contain all other suitable provisions such as the Board may deem reasonable and proper for the security of the bondholders, including but without limitation covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared

to be due before maturity, and as to the rights, liabilities, powers and duties arising from the breach by the Board of any of its duties or obligations.

(i) That any holder or holders of the Revenue Bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the Board or its employees, the agents and employees thereof, or any lessee or any of said facilities whose revenues are pledged, including but not limited to the right to require the Board to impose and establish and enforce sufficient and effective tolls and charges to carry out the agreements contained in the Resolution and indenture, or in both the Resolution and indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and in the event of default as defined in the Resolution authorizing the Revenue Bonds or in the indenture securing the Revenue Bonds to apply for and obtain the appointment of a receiver for any of the properties involved. If such receiver be appointed he shall enter and take possession of the facilities whose revenues shall have been pledged and until the Board and the County may be no longer in default, or until relieved by the Court, retain possession of the properties involved and collect and receive all revenues and tolls arising therefrom in the same manner as the Board itself might do, and shall dispose of all such moneys and apply same in accordance with the obligations of the Board under the Resolution or indenture, and as the Court may direct. Nothing in this Act shall authorize any bondholder to require the Board to use any funds in the payment of the principal or of interest on the bonds except from the revenues pledged for their payment.

(j) The Resolution or the indenture securing the bonds may contain provisions to the effect that so long as the revenues of such park facilities are pledged to the payment of Revenue Bonds no free service shall be rendered by any of such facilities of the park for which tolls, charges and rentals are to be effective under the Resolution.

(k) All such revenue bonds shall be and are hereby declared to be legally authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of the State of Texas, and of all municipal corporations, counties, political subdivisions, public agencies, and taxing districts within the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public

funds of all municipal corporations, counties, political subdivisions, public agencies and taxing districts within the State of Texas, and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value when accompanied by all matured coupons appurtenant thereto.

(l) The provisions contained in the Resolution and in the indenture and the applicable provisions of this Act shall constitute an irrevocable contract between the Board and the County on the one part and the holders of such bonds on the other part.

Leases or Operating Agreements Made Prior to, or  
Concurrently With, Authorization of Bonds

Sec. 16. At any time prior to the authorization of Revenue Bonds secured by a pledge of the revenues from any designated facility or facilities of the park or parks, the Board may within its discretion and for such period of time as it may determine make a contract or lease agreement with a company, corporation, or individual, for the operation of such facility, or facilities, the consideration for such contract or lease agreement to be specified, or the method of determining such consideration to be prescribed in such contract or lease agreement. The revenues from any such contract or agreement may be pledged in the Resolution or indenture as security or additional security for the Revenue Bonds. Any such facility or facilities may likewise be leased under such contract or lease agreement concurrently with the authorization of the issuance of said Revenue Bonds, and the revenues therefrom pledged as security or additional security for the Revenue Bonds; and in the event that issuance of said Revenue Bonds is authorized concurrently with the contract or lease agreement then the revenues from such contract or agreement shall constitute the sole or substantially all of the security for the Revenue Bonds such contract or agreement must provide that the rentals, tolls and charges to be enforced by such lessee for the use or services provided by such facility or facilities shall be sufficient at least to yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of such facility or facilities, plus an amount which will assure income to the Board to permit and assure payments into the several funds and accounts in the manner, at the times and in the amounts specified in the Resolution. Any such lease agreement or contract may provide that such rentals, tolls and charges may be sufficient to yield a reasonable profit to the other party to the lease agreement or contract, but to be realized only after payment in full of the obligation to the Board; any such operating or lease contract may provide for payment of the annual consideration or rental in monthly installments approximately equal and that failure to pay any required sum when due may be declared to be a breach of contract or agreement, entitling the Board under regulations

prescribed therein to declare the contract or agreement forfeited and to take over the operation and maintenance of such facility or facilities, but such remedy shall be cumulative of all others therein provided or recognized.

**Annual Financial Statement; Budget; Operation Without Seeking Appropriation**

Sec. 17. Before July 1st of each year the Board shall prepare and not later than July 1st file with the County Judge of such County a complete statement showing the financial status of the Board, its properties, funds and indebtedness. The statement shall be in two (2) parts or shall be so prepared as to show separately (a) all information concerning the Revenue Bonds, the income from pledged facilities, and expenditures of such revenues, and (b) all information concerning moneys which may have been appropriated to the Board by the Commissioners Court, realized from taxation, and moneys, if any, realized from the sale of tax supported bonds theretofore issued by the County. Concurrently with the filing of such statement, the Board shall file with the County Judge of such County a proposed budget of its needs, if any, for the next succeeding calendar year. To the extent that the Board is able to finance its operations and to maintain its property from the revenues of facilities, whose income is pledged to Revenue Bonds, in the manner provided in the Resolution or in the trust indenture, no approval or authorization by the Commissioners Court shall be necessary. But such budget shall involve only anticipated supplemental expenditures. The County Judge shall incorporate such requested budget in the County budget to be prepared by him during the month of July of each year. As a part of the County's tentative budget, the items thus certified by the Board shall be subject to the procedure for the County budget prescribed by Chapter 206, Acts of the Regular Session of the Forty-second Legislature, Sections 10 to 13, both inclusive, carried forward in Vernon's Annotated Statutes as Articles 689-a-9 to 689-a-12. It shall be the duty, however, of the Board to so operate said park or parks that there will be available from the gross revenues received from the operation of park facilities whose revenues are pledged to the payment of Revenue Bonds money sufficient to pay the operation and maintenance expenses of said facilities without seeking from the Commissioners Court the appropriation of additional money for the expense of maintaining and operating such facilities.

**Rules and Regulations**

Sec. 18. The Board shall have the power to adopt and promulgate all reasonable regulations and rules, applicable to tenants, concessionaires, residents and users of park facilities, regulating hunting, fishing, boating and camping and all recreational and business privileges in any such park or parks.

**Acceptance of Grants and Gratuities**

Sec. 19. The Board is hereby authorized to accept grants and gratuities in any form from any source approved by the Board including the United States Government or any agency thereof, the State of Texas or any agency thereof, any private or public corporation; and any other person, for the purpose of promoting, establishing and accomplishing the objectives and purposes and powers herein set forth.

**Validation of Appointment and Acts of Existing Board**

Sec. 20. The appointment of any Board of Park Commissioners heretofore made is hereby validated provided any such park commissioners heretofore appointed shall within fifteen (15) days after this Act becomes law file a good and sufficient bond, as provided for herein in Section 4; and all acts, contracts, leases, and agreements heretofore made by any existing Board of Park Commissioners pertaining to any of the powers or purposes of this Act are hereby validated.

**Exercise of Powers by Commissioners Court**

Sec. 21. In the event the County Commissioners Court of any Eligible County, as hereinbefore defined, does not pass a resolution authorizing the establishment of such Board of Park Commissioners, or in the event the establishment of any such Board of Park Commissioners be declared by the courts to be invalid, then, in either event, the County Commissioners Court of any such Eligible County is hereby expressly granted the right to exercise, solely if the establishment of no such Board has been attempted or by ratification of the actions of any such Board prior to the declaration of the invalidity of said Board's establishment, any and all of the powers, acts and authority by this Act conferred, authorized and delegated to said Board of Park Commissioners, provided, nothing contained in this Section shall be construed as authorizing any such Commissioners Court to limit or restrict any such Board of Park Commissioners from exercising any and all of the powers, acts and authority conferred, authorized and delegated to it by the Legislature.

**Laws Cumulative; Conflict With Other Laws**

Sec. 22. This Act is cumulative of all other laws relating to County Parks, but this Act shall take precedence in the event of conflict.

**Partial Unconstitutionality**

Sec. 23. In case any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstance, or person, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance, or person, and it is intended that this law shall be construed and applied as if such section or provision had not

been included herein for any constitutional application.

[Acts 1949, 51st Leg., p. 408, ch. 218; Acts 1951, 52nd Leg., p. 486, ch. 304, § 1; Acts 1957, 55th Leg., p. 219, ch. 104, §§ 1, 2.]

**Art. 6079c-1. Bonds for Construction of Roads; Counties on Gulf Having Islands Suitable for Recreational Purposes**

Sec. 1. Any county situated on the coast of the Gulf of Mexico and having within its boundaries any islands susceptible of development for recreational purposes for the use and benefit of the inhabitants of such county shall be authorized to construct, improve and operate roads on such islands and to issue bonds for such purpose payable from tolls charged for their use, or from taxation, or from both such sources. Such bonds may be issued and secured in the manner and in accordance with the provisions of Chapter 304, Acts 1947, 50th Legislature, as amended by Chapter 122, Acts 1949, 51st Legislature,<sup>1</sup> except that no bonds, whether payable from taxes or revenues, shall be issued, nor shall any county funds be expended in any manner in connection with or on any such revenue project, unless and until they shall have been authorized at an election at which the question of their issuance and/or expenditure shall have been submitted to a vote of the people.

<sup>1</sup> Article 6795b-1.

Sec. 2. In those instances where any such county has issued bonds under said Chapter 304, Acts 1947, as amended, for any of the purposes authorized thereby and has secured the payment of such bonds by a pledge of the revenues to be derived from the operation of any such facility and further secured said bonds by the levy of ad valorem taxes authorized under Article 3, Section 52 of the Constitution, and which county may issue bonds for the purposes authorized in Section 1 hereof, where such bonds shall be payable wholly or partially from revenues, the provisions of Section 7 of said Chapter 304, as amended, empowering the State Highway Commission to declare such facilities to be a part of the State Highway System and thereafter to maintain and operate said facilities free of tolls shall be inapplicable to the facility first constructed, until the bonds issued under this Act shall have been paid, or a sufficient amount for the payment of all such bonds and interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders for such purpose.

[Acts 1955, 54th Leg., p. 666, ch. 237.]

**Art. 6079d. Validation of Acts, Proceedings and Orders; Taxes**

Sec. 1. That all acts and proceedings in the Commissioners Court in counties having a population of five hundred thousand (500,000) or more, according to the last preceding Federal Census, heretofore had and taken or attempted to be taken to acquire and operate certain lands as county parks, under the provisions of

Title 103, Chapters 5 and 6, of the Revised Civil Statutes of Texas, 1925, as amended, to wit: "Articles 6078-6081h, both inclusive of such Revised Civil Statutes, 1925, as amended," and all orders heretofore made and proceedings by and before Commissioners Courts of such counties to acquire and operate certain lands as county parks under the provisions of any of the foregoing Articles, shall be and the same are hereby ratified, validated, approved and confirmed in all respects, as if they had been duly and legally made in the first instance and as if same had been made with full statutory authority, regardless of whether the acquisition of such lands for use as county parks was by gift, purchase, condemnation proceedings, or otherwise.

Sec. 2. Any taxes heretofore levied by the Commissioners Court of such counties for the improvement and operation of such lands as county parks are hereby ratified and validated in all respects. All taxes either real, personal, or both heretofore levied, assessed and charged against any person by any Commissioners Court in such counties for the improvement and operation of county parks are hereby declared to be valid and binding tax obligations of said individuals and the same shall be collectible under the laws of this State providing for the collection of delinquent taxes with penalty and interest.

[Acts 1953, 53rd Leg., p. 905, ch. 372.]

**Art. 6079d-1. Validation of County Park Bond Elections, Proceedings and Bonds**

Sec. 1. That all county park bond elections heretofore held on the proposition of issuing bonds of the county for the purpose of purchasing and/or improving lands for park purposes, at which election more than a majority of the duly qualified resident electors of the county who owned taxable property within said county and who had duly rendered the same for taxation, voting at such election, voted in favor of the issuance of such bonds, are hereby in all things validated; and all the proceedings relating to such elections are hereby in all things validated; and all such bonds authorized at said elections, whether such bonds have yet been issued or not, are hereby in all things validated. The provisions of Chapter Nine of House Bill No. 6, Chapter 492, Acts of 52nd Legislature of Texas, Regular Session, 1951,<sup>1</sup> shall have no application to the elections validated under the provisions of this Act.

Sec. 1A. This Act shall have no application to litigation pending in any court of competent jurisdiction in this state on the effective date hereof questioning the validity of any matters hereby validated if such litigation is ultimately determined against the validity of the same. Nor shall this Act apply to any matters which have heretofore been declared invalid by a court of competent jurisdiction in this state.

Sec. 2. If any provision or part of this Act or the application thereof to any person or circumstance shall be held by a court of compe-

tent jurisdiction to be invalid or unconstitutional, the remainder of this Act and the application of such provision or part to other persons or circumstances shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1961, 57th Leg., p. 52, ch. 34.]

<sup>1</sup> Enacted the Texas Elective Code.

**Art. 6079d-2. Validation of County Park Bond Elections, Proceedings and Bonds; Counties of More Than 1,000,000**

Sec. 1. That all county park bond elections heretofore held in any county with a population of more than one million (1,000,000) at the last preceding Federal Census on the proposition of issuing bonds of the county for the purpose of purchasing and/or improving lands for park purposes, at which election more than a majority of the duly qualified resident electors of the county who owned taxable property within said county and who had duly rendered the same for taxation, voting at such election, voted in favor of the issuance of such bonds, are hereby in all things validated; and all the proceedings relating to such elections are hereby in all things validated; and all such bonds authorized at said elections, whether such bonds have yet been issued or not, are hereby in all things validated.

Sec. 2. This Act shall have no application to litigation pending in any court of competent jurisdiction in this State on the effective date hereof questioning the validity of any matters hereby validated if such litigation is ultimately determined against the validity of the same, nor shall this Act apply to any matters which have heretofore been declared invalid by a court of competent jurisdiction in this State.

[Acts 1963, 58th Leg., p. 806, ch. 309, eff. Aug. 23, 1963.]

**Art. 6079e. Counties of 350,000 or More**

**Applicability of Law**

Sec. 1. The provisions of this Act shall apply to any county in this State having a population of three hundred fifty thousand (350,000) or more according to the last preceding Federal Census.

**Creation of Board; Powers**

Sec. 2. Any such county, for the purpose of acquiring, improving, equipping, maintaining, financing, and operating any one or more public parks owned or to be acquired by such county, may by order passed by the Commissioners Court adopt the provisions of this Act, and thereby obtain the benefits hereof for said purpose. In such order it shall be provided, with respect to such park or parks, whether the Commissioners Court shall exercise all the powers granted by and perform all the duties specified in this Act, or whether a "Board of Park Commissioners" (hereinafter sometimes referred to as the "Board") shall be created and exercise the powers and perform the duties hereinafter provided with respect to such

Board. In the event that it is provided that the Commissioners Court shall exercise all the powers and perform all the duties, then the provisions of this Act with reference to the powers and duties of such Board shall apply to said Commissioners Court, and all the powers granted by and duties specified in this Act relating to said Board and to the Commissioners Court shall be exercised and performed by said Court. In the event that it is provided that such Board shall be created, then the powers granted by and duties specified in this Act shall be exercised and performed by said Commissioners Court and Board in the manner hereinafter set forth. Further, in the event that it is provided that such Board shall be created, the Commissioners Court shall transfer to said Board jurisdiction and control of such park or parks, subject, however, to the provisions of this Act.

**Personnel of Board; Compensation; Expenses; Oath and Bond**

Sec. 3. The Board of Park Commissioners shall be composed of seven (7) members. After the Commissioners Court has adopted an order creating such Board, as provided in Section 2 hereof, the Commissioners Court shall appoint seven (7) persons as members of such Board. Three (3) members of the first Board so appointed shall serve for a term expiring on February 1st following their appointment and until their successors have been appointed and qualified, and the remaining four (4) members shall serve for a term expiring on the second February 1st which follows their appointment (being one year from the date of the expiration of the term of the three (3) members, as provided above) and until their successors have been appointed and qualified. In the appointment of the members of said first Board, the Commissioners Court shall designate the respective terms of office of such members. Except for the first Board, the term of office of members of the Board shall be for two (2) years ending on February 1st and until their successors are appointed and qualified, and in the month of January of each year the Commissioners Court shall appoint three (3) or four (4) Park Commissioners, as the case may be, to succeed the members whose term shall expire on the following February 1st. If a vacancy on the Board occurs because of the resignation or death of a member, or otherwise, the Commissioners Court shall fill the same for the unexpired term by the appointment of a successor member. Each Park Commissioner shall be a duly qualified resident voter of the county but shall not be an officer or employee of the county or of any incorporated city therein. Each Park Commissioner shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk, payable to the County Judge of such county. Such bond shall be in the sum prescribed theretofore by the Commissioners Court, but not less than Five Thousand Dollars (\$5,000).

Said bond shall be conditioned upon the faithful performance of the duties of such Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Park Commissioner, and the cost of said bonds shall be paid by the Board. A certificate of the appointment or re-appointment of any such Park Commissioner executed by the County Judge and attested by the County Clerk shall be filed in the office of such County Clerk, and shall be conclusive evidence of the due and proper appointment of such Commissioner. Each Park Commissioner shall annually receive as compensation a sum to be fixed by the Commissioners Court not to exceed Fifteen Dollars (\$15) for each meeting attended for the first fifty-two (52) meetings held during a calendar year, but shall receive no compensation for any additional meetings held during such calendar year. Each Park Commissioner shall be compensated for all necessary expenses, including traveling expenses, incurred in performing his (or her) duties as Commissioner.

#### Supervision of Commissioners Court

Sec. 4. Notwithstanding anything in this Act to the contrary, the Board shall be subject to the supervision of the Commissioners Court in exercise of all its rights, powers, and privileges granted hereunder and in performance of all its duties required hereunder; and the Commissioners Court shall approve all contracts, leases, deeds, and other agreements made or granted by the Board, and appropriate minute entry in the official minutes of said Court shall constitute sufficient evidence of such approval.

#### Chairman of Board; Officers; Quorum; Meetings; Records; Seal

Sec. 5. At the time of appointment of the Park Commissioners of the first Board, the Commissioners Court shall designate one of the Commissioners as Chairman of such Board, who shall serve in that capacity until the expiration of the term for which he was appointed (or within such period until he may have vacated his office as a Park Commissioner), and thereafter the Board shall elect a Chairman from among its Park Commissioners. The Board shall elect from among its own members a Vice-chairman, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by the same person, and in the absence or unavailability of the Secretary or the Treasurer, in the event two (2) persons are holding said positions, the other such officer may act for and perform all of the duties of such absent or unavailable officer during the period of absence or unavailability. The Board shall hold regular meetings at such times to be fixed by the Board, and may hold special meetings at such other times as the business or necessity may require. Four (4) Park Commissioners shall constitute a quorum of the Board for the purpose of conducting or transacting any of its business and exercising any of its powers, and for all other purposes, and any and all action

of the Board may be taken by a majority vote of the Park Commissioners present. The Board shall keep a true and full account of all its meetings and proceedings, and shall preserve its minutes, accounts, contracts, and all other records in a fireproof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the Commissioners Court and other officers of the county at all reasonable times during office hours on business days. The Board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on such other instruments as may be required by the Board.

#### Secretaries and Stenographers; Employment of Park Managers

Sec. 6. The Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties, and compensation. In addition, the Board may also employ and compensate a manager for any park or parks, and may give him full authority in the management and operation of the park or parks, subject to direction and orders of the Board and the Commissioners Court.

#### Depositories; Audit of Moneys; Warrants or Checks

Sec. 7. (a) The depository or depositories of all moneys or funds belonging to or under the control of the Board (other than bond proceeds or revenues and funds pledged to the payment of revenue bonds, which are hereinafter provided for) shall be selected by the Commissioners Court on the basis of competitive bids substantially in the manner prescribed by law for county funds, and the moneys and funds so deposited shall be secured substantially in the manner and amount prescribed by law for county funds.

(b) The County Auditor shall maintain a current audit of all such moneys and funds, and shall prepare monthly and annual audit reports, which reports shall be filed with the Commissioners Court and with the Board, and shall be available for public inspection at all reasonable times during office hours on business days.

(c) Warrants or checks for the withdrawal of such moneys or funds shall be signed by any officer of the Board (or, when duly designated by order or resolution of the Board, by one bonded employee of the Board) and countersigned by the County Auditor.

(d) The County Attorney shall perform all the necessary legal services for the Board.

#### Personal Interest

Sec. 8. No Park Commissioner or employee of the Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment, or any business located within the confines of any public park administered by the Board or in any way related there-

to, nor shall any Park Commissioner have any interest, direct or indirect, in any contract or proposed contract for construction, materials, or services in connection with or related to any park under administration by the Board.

**Maintenance and Operation of Parks; Contracts, Leases and Agreements; Disbursement of Funds**

Sec. 9. Subject to the supervision of the Commissioners Court, the Board shall maintain and operate any park or parks administered by said Board, and subject to the approval of said Court, the Board shall have full and complete authority to enter into any contract, lease, or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipment, maintenance, or operation of any facility or facilities located or to be located on or pertaining to any park or parks administered by the Board; and any such contract, lease, or other agreement may be for such length or period of time and upon such terms and conditions as may be prescribed therein. The Board shall also have authority to disburse and pay out moneys and funds under its control for any lawful purpose for the benefit of such park or parks.

**Contracts, Leases and Agreements Necessary and Convenient**

Sec. 10. Such Board shall have general power and authority to make and enter all contracts, leases, and agreements which the Board shall deem necessary or convenient to carry out any of the purposes and powers granted in this Act, upon such terms and conditions and for such length or period of time as may be prescribed therein. Any such contract, lease, or agreement may be entered into with any person, real or artificial, any corporation, municipal or private, any governmental agency or bureau, including the United States Government and the State of Texas and political subdivisions of said State, and the Board may make contracts, leases, and agreements with any such persons, corporations, or entities for the acquisition, financing, construction, or operation of any facilities in or connected with or incident to any such park. Any and all contracts, leases, and agreements herein authorized, to be effective, shall be authorized by order or resolution of the Board, shall be executed by its Chairman or Vice-chairman and attested by its Secretary or Treasurer, and shall be approved by the Commissioners Court. Any such contract, lease, or agreement shall be binding upon the Board and the County, the powers and provisions set forth in this Act being complete within themselves, without reference to any other statute or statutes.

**Rules and Regulations; Grants and Gratuities; Suits**

Sec. 11. (a) The Board shall have the power and authority, subject to the approval of the Commissioners Court, to adopt and promulgate all reasonable regulations and rules concerning the use of any park or parks administered by said Board.

(b) The Board is hereby authorized to accept grants and gratuities (for the benefit of any park or parks administered by the Board or for the use of the Board in carrying out its powers and duties with respect to any such park or parks) in any form and from any source approved by the Board and the Commissioners Court, including the United States Government or any part thereof, the State of Texas or any agency thereof, any private or public corporation, or any other person or persons.

(c) Such Board shall have the right to sue and be sued in its own name.

**Revenue Bonds**

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip, and repair any such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to such park or parks, or for any one or more of such purposes, a county within the purview of this Act shall have the power and is hereby authorized, from time to time, to issue revenue bonds (hereinafter sometimes called the "Revenue Bonds" or "Bonds"), which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and other laws of the State of Texas. Included, but without limiting, among the properties, improvements, and facilities that may be acquired through the issuance of Revenue Bonds are the following; stadia, coliseums, auditoriums, athletic fields, pavilions, and buildings and grounds for assembly, together with parking facilities or other improvements incident thereto. Any such Revenue Bonds shall be authorized by order (hereinafter sometimes called the "Bond Order") adopted by the Commissioners Court. Such Revenue Bonds shall be issued in the name of the county, shall be signed by the County Judge and attested by the County Clerk, and shall have impressed thereon the seal of the Commissioners Court; provided, that the signature of the County Judge and the signature of the County Clerk on the Revenue Bonds may be the facsimile signatures of such officers, either or both, and the seal of the Commissioners Court may be a facsimile seal, all as may be provided in the Bond Order, and the interest coupons attached to such Revenue Bonds may also be executed by the facsimile signatures of said officers; provided, further, that said facsimile signatures and facsimile seal may be lithographed, engraved, or printed. Such Revenue Bonds shall mature serially or otherwise in not to exceed forty (40) years from their date or dates. Such Bonds may be sold by the Commissioners Court at a price and under terms determined by said Court to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of such Bonds calculated by the use of standard bond yield tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Bond Order shall prescribe the details as to

the Revenue Bonds. It may contain provisions for the calling of the Bonds for redemption prior to the respective maturity dates at such prices and at such time or times as may be prescribed in such Bond Order, but except for such rights of redemption expressly reserved in the Bond Order and in the Bonds, they shall not be subject to redemption prior to their scheduled maturity date or dates except with the consent of the holder or holders. The Bonds may be made payable at such time or times and at such place or places, within or without the State, as may be prescribed in the Bond Order, and such Bonds may be non-registerable or may be made registerable as to principal alone, or as to both principal and interest, all as may be provided in said Bond Order.

(b) Revenue Bonds may be issued from time to time in one or more installments and in one or more series.

(c) Such bonds may be secured by a pledge of all or any part of the Net Revenues (as defined below) from the operation of such park or parks, or from the properties or facilities thereof and incident thereto, either or both. The Net Revenues of any one or more contracts, operation contracts, leases, or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional, security for the support of the Bonds. Any other revenue, other than tax revenue, as may be specified in the Bond Order, may be pledged for the support of the Bonds. In any Bond Order, the right may be reserved in the county under conditions and terms therein specified for the issuance of additional Revenue Bonds which will be on a parity with, or subordinate to, the Revenue Bonds then being issued, either or both.

(d) The term "Net Revenues" as used in this Act shall mean the gross revenues from the operation of those properties and facilities of the park or parks, the net revenues of which properties and facilities are pledged for the support of the Bonds, after deduction of the necessary and reasonable expenses of operation and maintenance of such properties and facilities.

(e) From the proceeds of the Bonds, there may be set aside (as shall be prescribed in the Bond Order) an amount for payment of interest on the Bonds estimated to accrue during the construction period and, in addition, such reserve moneys for the benefit of the payment of the Bonds as may be deemed proper (which reserve moneys may be placed into the interest and sinking fund or into a separate reserve fund, as shall be prescribed in the Bond Order). Also, from said proceeds there shall be paid all expenses necessarily incurred in issuing and selling such Bonds. The remainder of such proceeds shall be used for the purposes specified in the Bond Order and in the Bonds.

(f) Said Bonds shall not be, and shall never be construed to be, a debt of the county or of the State of Texas, but shall be payable solely and only from the revenues pledged to their

payment as herein provided. No principal of or interest on such Bonds or any refunding bonds issued to refund such Bonds shall be a debt against the tax revenues of such county, but solely a charge upon the pledged revenues. Such Bonds or refunding bonds shall never be reckoned in determining the power of the county to incur obligations payable from taxation. Each such Bond shall contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(g) So long as any of the Revenue Bonds are outstanding no other obligations shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Bond Order.

(h) No such bonds shall ever be issued unless authorized by a majority vote of duly qualified resident voters of said county who own taxable property within said county and who have duly rendered the same for taxation, voting at an election called for such purpose by the Commissioners Court, which election shall be called and held and notice thereof given as is provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, except that the proposition to be submitted shall not provide for the levy of any tax whatsoever, and the ballot shall be substantially as follows:

"FOR the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

"AGAINST the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

(i) After any Bonds have been authorized by the Commissioners Court, such Bonds and the record relating to their issuance shall be submitted to the Attorney General of Texas for his examination and approval, and it shall be the duty of the Attorney General to approve such Bonds when issued in accordance with this Act. After such Bonds have been approved by the Attorney General, they shall be registered by the Comptroller of Public Accounts of Texas. When any such Bonds have been approved by the Attorney General, registered by the Comptroller of Public Accounts, and delivered to the purchasers, they shall thereafter be incontestable. When any Bonds recite that they are secured partially or otherwise by a pledge of the proceeds of or income from any contract, lease, or other agreement, a copy of such contract, lease, or other agreement and of the proceedings authorizing the same may be submitted to the Attorney General along with the Bond record, and in such event the approval of the Attorney General of the Bonds shall constitute an approval of such contract, lease, or other agreement, and thereafter the same shall be incontestable except for forgery or fraud.

#### Refunding Bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable may be issued by the Com-

missioners Court for the purpose of refunding Bonds issued under this Act, and no election shall be necessary for the issuance of such refunding bonds. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. Such refunding bonds may be issued to refund bonds of more than one series or issue of such outstanding Bonds and combine pledges for the outstanding Bonds for the security of the refunding bonds, and such refunding bonds may be secured by other and additional revenues; provided, that such refunding bonds will not impair the contract rights of the holders or any of the outstanding Bonds which are not to be refunded. Refunding bonds shall be authorized by order of the Commissioners Court, and shall be executed and mature as is provided in this Act for original Bonds. They shall bear interest at the same or lower rate than that of the Bonds refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid. They shall be approved by the Attorney General as in the case of original Bonds, and shall be registered by the Comptroller upon surrender and cancellation of the Bonds to be refunded, but in lieu thereof, the order authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the place or places where the original Bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original Bonds to their option or maturity date, and the Comptroller shall register them without the surrender and cancellation of the original Bonds. All such refunding bonds, after they have been approved by the Attorney General and registered by the Comptroller, shall be incontestable.

#### Expenses; Fees and Tolls

Sec. 14. (a) The necessary and reasonable expenses of operation and maintenance of the properties and facilities whose revenues are pledged to the payment of the Revenue Bonds shall always be a first lien on and charge against the income thereof. So long as any of said Bonds or interest thereon remain outstanding, the Board shall charge and require the payment of fees, charges, and tolls for the use of such properties and facilities which shall be equal and uniform within classes and which shall yield revenues at all times at least sufficient to pay such expenses of operation and maintenance, and to provide for the payments prescribed in the Bond Order for the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and such other funds as may be provided in such Bond Order; and the Bond Order may include and make any additional covenants with respect to the Bonds and the pledged revenues and the operation, maintenance, and upkeep of those improvements and facilities, the income of which is pledged.

(b) The Board is authorized to determine the rates, charges, and tolls which must be charged

by it for the use, operation, or lease of such properties and facilities.

(c) It shall be the duty of the Commissioners Court to see that the rates, charges, and tolls charged by the Board are sufficient to comply with the terms and provisions of this Section 14 and of Section 15 following, and if for any reason the same are not so sufficient, then the Commissioners Court shall have the duty to, and shall, impose additional rates, charges, and tolls so that there will be revenues sufficient at all times for the purposes set forth in this Section 14 and in Section 15 following, which additional rates, charges, and tolls will govern over those fixed by the Board.

#### Provisions Applicable to Bonds

Sec. 15. The following provisions shall be applicable to Revenue Bonds and refunding bonds issued under this Act:

(a) It shall be the duty of the Board to fix such rates, charges, and tolls for the use of the properties and facilities whose revenues are thus pledged as will yield revenues fully sufficient at all times to operate and maintain such properties and facilities, to pay the interest on and principal of the Bonds, and to make any and all other payments or deposits as provided in or required by the Bond Order. In the event any part of the security for the Revenue Bonds consists of money to be received by the Board as consideration for properties or facilities belonging to the county but operated by others than the Board under some form of lease or operating contract, it shall be the duty of the Board to fix and authorize rates, charges, and tolls to be made by such other person or persons for services rendered or to be rendered by such properties or facilities, at least sufficient to assure receipt by the Board of money which the Board is committed to pay from such source for the benefit of the Revenue Bonds under the Bond Order.

(b) The proceeds of the Bonds shall be used and shall be disbursed under such restrictions as may be provided in the Bond Order or in a separate escrow agreement, or in both such Order and escrow agreement, and there is hereby created and granted a lien upon such moneys until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such Bonds. Any surplus remaining from the Bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Bond Order, and creating any reserve fund or funds prescribed in said Order, and after paying all expenses relating to the issuance and sale and delivery of said Bonds, and after the accomplishment of the Bond purposes, shall be used for retiring the Bonds to the extent that they can be pur-

chased at prevailing market prices, with any remainder after such purchase to be deposited into the interest and sinking fund of the Bonds.

(c) The Bond Order may provide that such Revenue Bonds shall contain a recital to the effect that they are issued pursuant to and in strict conformity with this Act, and such recital when so made shall be conclusive evidence of the validity of such Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district or entity of the State.

(e) If so provided in the Bond Order, an indenture securing the Bonds may be entered into between, and executed by, the county and a corporate trustee, or entered into between, and executed by, the county and a corporate trustee and a corporate or individual co-trustee. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Bond Order or indenture (if any), either or both, may contain such provisions for protecting or enforcing the rights or remedies of the Bondholders as may be considered by the Commissioners Court reasonable and proper and not in violation of law, including covenants setting forth the duties of the county and the Board in reference to maintenance, operation, repair, and insurance (including insurance against loss of use and occupancy) of the properties or facilities whose revenues are pledged, and the custody, safeguarding, and application of the Bond proceeds and of the revenues to be received from the operation of properties or facilities; and provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and other funds, and may include such additional covenants with respect to the Bonds and the pledged revenues and the operation, maintenance, and upkeep of those properties and facilities the income of which is pledged, as the Commissioners Court may deem appropriate.

(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds obtained from the sale of any Bonds, which depository shall be selected by the Commissioners Court, without the necessity of seeking competitive bids, and without reference to any other statute, which moneys shall be secured in the manner and amount as may be prescribed by the Commissioners Court

or by the Bond Order, indenture (if any), or separate escrow agreement.

(h) The Bond Order shall provide for and designate the depository or depositories of the interest and sinking fund, reserve fund or funds, and any other funds established by such Order, and such depository or depositories may be any bank or trust company within or without the State of Texas, and in this connection, such depository or depositories may be selected and designated without the necessity of seeking competitive bids, and without reference to any other statute. The moneys in such funds shall be secured in the manner and to the extent as provided in the Bond Order, and in this connection the Bond Order may provide that such moneys shall be secured by direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government.

(i) The Bond Order and indenture (if any), either or both, may set forth the rights and remedies of the Bondholders and of the Trustee, and may (subject to paragraph j immediately following this paragraph i) restrict the individual rights of action of the Bondholders; may set forth and contain such other provisions and covenants as may be deemed reasonable and proper for the security of the Bondholders, including, but without limitation, provisions prescribing happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the Bonds shall become due, or may be declared to be due, before maturity, and as to the rights, liabilities, powers, and duties arising from the breach by the Board or by the Commissioners Court of any of its duties or obligations.

(j) Any holder or holders of any Bonds issued hereunder or of interest coupons originally attached thereto, may either at law or in equity, by suit, action, mandamus, or other proceeding, enforce and compel performance of all duties required by this Act to be performed by the Board or by the Commissioners Court, including the making and collection of reasonable and sufficient fees, charges, and tolls for the use of the properties and facilities the income of which is pledged, the segregation of the income and revenues of such properties and facilities, and the application of such income and revenues pursuant to the provisions of the Bond Order and indenture (if any) and this Act.

(k) The Bond Order or the indenture (if any), either or both, may contain provisions to the effect that so long as any Bonds are outstanding either as to principal or interest, no free service shall be rendered by any of the properties or facilities the income of which is pledged.

(l) All Bonds issued under this Act shall be and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas, and all such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions or corporations of the State of Texas. Such Bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions or corporations of the State of Texas; and such Bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmaturing coupons appurtenant thereto.

(m) The provisions contained in the Bond Order and in the indenture (if any) and the applicable provisions of this Act shall constitute an irrevocable contract between the Board and the Commissioners Court, on the one part, and the holders of the Bonds, on the other part.

**Annual Financial Statement; Budget; Operation  
Without Appropriation**

Sec. 16. On or immediately after January 1st of each year, the Board shall prepare and file with the Commissioners Court a complete statement showing the financial status of the Board and the properties, funds, and indebtedness under the administration of said Board. Said statement shall be so prepared as to show separately all information concerning the Revenue Bonds, the gross revenues from properties or facilities the net revenues of which are pledged to the payment of the Revenue Bonds, and the expenditures from said gross revenues, and all information concerning moneys which may have been appropriated by the county for operational and maintenance expenses. Concurrently with the filing of such statement with the Commissioners Court, the Board shall file with the County Auditor (a) a copy of said statement, and (b) a proposed budget of its needs for the then current calendar year. The County Auditor shall include such proposed budget as a part of the county budget prepared and submitted to the Commissioners Court under the provisions of House Bill No. 958, page 144, Acts of the Forty-sixth Legislature of Texas, Regular Session, 1939, as the same is now or hereafter may be amended. In this connection it shall be the duty of the Board to operate the properties or facilities the net revenues of which are pledged to the payment of Revenue Bonds so that the gross revenues derived from the operation of such properties or facilities will be sufficient to pay the operation and maintenance expenses of such properties and

facilities and make all payments required under the Bond Order for the benefit of such Bonds (thereby making it unnecessary to appropriate tax moneys for such operation and maintenance expenses and Revenue Bond payments).

**Invalidity of Establishment; Exercise of Powers by  
Commissioners Court**

Sec. 17. In the event that the establishment hereunder of any Board of Park Commissioners be declared by the courts to be invalid or unconstitutional, then all the powers granted to and duties imposed upon such Board by this Act shall be exercised and performed by said Commissioners Court, and all acts of such Board prior to its being so declared to be invalid shall be deemed to have been the acts of said Court.

**Powers and Duties With Respect to Other Parks**

Sec. 18. The Commissioners Court of any county covered by this Act may from time to time adopt the provisions hereof with respect to another park or parks and may exercise the powers granted by and perform the duties specified in this Act with respect to such other park or parks, and may appoint another Board of Park Commissioners for such other park or parks, all as provided in Section 2 and in the remainder of this Act. The Commissioners Court may also transfer to a previously created Board jurisdiction and control of an additional park or parks, provided that the same will not impair the contract rights of the holders of any outstanding Revenue Bonds. With respect to such other park or parks, the powers granted by this Act shall be exercised in such a manner so as not to infringe in any way upon the contract rights of the holders of then outstanding Revenue Bonds, and such other park or parks shall not be operated or maintained in any manner which would compete with or reduce the revenues of any park properties or facilities the income of which has been pledged to the payment of any then outstanding Revenue Bonds.

**Law Cumulative; Conflict With Other Laws**

Sec. 19. This Act is cumulative of all other laws relating to county parks, but this Act shall take precedence in the event of conflict.

**Partial Invalidity**

Sec. 20. In case any one or more of the Sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstance, or person, shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance, or person, and it is intended that this Act shall be construed and applied as if such section or provision had not been included herein for any constitutional application.

[Acts 1957, 55th Leg., 1st C.S., p. 7, ch. 7; Acts 1959, 56th Leg., p. 1036, ch. 478, § 1.]

**Art. 6079f. Adjacent Counties Having Population of 350,000 or More**

**Applicability of Law**

Sec. 1. The provisions of this Act are applicable to any two (2) adjacent counties in this State each having a population of three hundred fifty thousand (350,000) or more according to the last preceding Federal Census.

**Joint Park Board; Creation; Powers**

Sec. 2. Any two (2) such counties, for the purpose of providing public parks or park for the two (2) such counties, may by order passed by the Commissioners Court of each of the two (2) such counties, create a Board to be designated "Joint Board of Park Commissioners," hereinafter sometimes in this Act referred to as the "Joint Board" or "Joint Park Board" and by resolution transfer to said Joint Board jurisdiction and control over any park or parks any part of which is within an area containing any part of the boundary separating the two (2) said counties and/or any park or parks entirely or wholly within either of the two (2) said counties. Any such Joint Board shall have the powers authorized in and shall perform the duties specified in this Act.

**Personnel of Joint Board; Terms; Vacancies; Expenses**

Sec. 3. The Joint Board of Park Commissioners shall be composed of thirteen (13) Commissioners, consisting of a Chairman and twelve (12) members, to be appointed by the Governor with the advice and consent of the Senate. Six (6) members shall be appointed from each of the two (2) counties, and the Chairmanship shall alternate between the two (2) counties as hereinafter provided. Three (3) of the members who are first appointed from each county shall be designated by the Governor to serve for terms of one (1) year and three (3) shall be designated to serve for terms of two (2) years from the date of their appointments, and thereafter each of the twelve (12) members shall be appointed for a term of office of two (2) years. At the time of the creation of the Joint Board the Governor shall appoint a Chairman from the county having the larger population according to the last preceding Federal Census, who shall be appointed for a term of two (2) years from the date of his appointment; and upon the expiration of the two-year term of the Chairman who is first so appointed, the Governor shall appoint a Chairman from the county having the smaller population at the time of the creation of the Board, to serve for a term of two (2) years; and the Chairmanship of the Joint Board shall alternate thusly between the two (2) counties every two (2) years. No Joint Park Commissioner may be an officer or employee for either of the two (2) counties for which the Joint Board of Park Commissioners is created, or an officer or employee of any incorporated city located in either of said counties. A Joint Park Commissioner shall hold office until his successor has been appointed and

qualified. Vacancies on the Joint Board of Park Commissioners shall be filled by appointment by the Governor. Each Joint Park Commissioner shall be compensated for all necessary expenses, including traveling, incurred in performing his duties as Joint Park Commissioner; when an account shall thus have been approved by the Commissioners Court of his county it will be paid in due time by the Joint Board's check or warrant.

**Oath and Bond**

Sec. 4. Each Joint Park Commissioner so appointed shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk of his county, payable to the order of the County Judge of such county, and approved by the Commissioners Court of such county. Such Bond shall be in the sum prescribed heretofore by the Commissioners Court of such county, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Joint Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Joint Park Commissioner; the cost of said bonds shall be paid by the Joint Board.

**Powers Vested in Commissioners; Quorum; Necessary Vote; Officers; Meetings; Funds**

Sec. 5. The powers under this Act shall be vested in the Joint Board of Park Commissioners as constituted from time to time. Seven (7) Joint Park Commissioners shall constitute a quorum of the Joint Board for the purposes of conducting its business and exercising its powers, and for all other purposes, provided that at least three (3) of the said Joint Park Commissioners shall be present from each of the two (2) such counties. The action of the Joint Board may be taken by a majority vote of the Joint Park Commissioners present. The Joint Board shall elect from among its own members a Vice-Chairman who shall not represent the same county as the Chairman of the Joint Board; a Secretary and a Treasurer, provided that the Treasurer shall not represent the same county as the Secretary, and these officers shall serve for terms of two (2) years. In the absence or unavailability of either the Secretary or the Treasurer the other such officer may act for and perform all of the duties of such absent or unavailable officer during such period of absence or unavailability. The Joint Board shall hold regular meetings at times to be fixed by the Joint Board and may hold special meetings at such other times as the business or necessity may require. The money belonging to or under control of the Joint Board shall be deposited and shall be secured substantially in the manner prescribed by law for county funds.

**Depositories; Warrants or Checks; Employees and Agents; Manager; Seal**

Sec. 6. The depository or depositories for such funds shall be selected by the Joint

Board. Warrants or checks for the withdrawal of money shall be signed by an officer of the Joint Board and one (1) other Joint Park Commissioner both of whom shall be duly designated by resolution entered in the minutes of the Joint Board, or, when duly designated by resolution of the Joint Board, by two (2) bonded employees of the Joint Board. The Joint Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties and compensation. In addition the Joint Board may also employ and compensate a manager for any park or parks and may give him full authority in the management and operation of the park or parks subject only to the direction and orders of the Joint Park Board. The Joint Board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are required to be executed under seal.

**Personal Interest**

Sec. 7. No Joint Park Commissioner or employee of the Joint Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment or any business located within the confines of or in any way related to any public park administered by such Joint Board, nor shall he have any interest, direct or indirect, in any contract or proposed contract for construction, materials or services in connection with or related to any park under control of the Joint Board.

**Records**

Sec. 8. The Joint Board of Park Commissioners shall keep a true and full account of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof vault or safe. All such records shall be the property of the Joint Board and shall be subject to inspection by the Commissioners Court of either of the two (2) such counties at all reasonable times during office hours on business days.

**Contracts, Leases and Agreements; Disbursement of Funds**

Sec. 9. Such Joint Board shall have full and complete authority to enter into any contract, lease or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any park or parks under its control. It shall also have authority to disburse and pay out all funds under its control for any lawful purpose for the benefit of any such park or parks.

**Contracts, Leases and Agreements Necessary and Convenient**

Sec. 10. Such Joint Board shall have general power and authority to make and enter into all contracts, leases and agreements which said Joint Board shall deem necessary and convenient to carry out any of the purposes and

powers granted in this Act. Any such contract, lease or agreement may be entered into, with any person, real or artificial, any corporation, municipal, public or private, any governmental agency or bureau, including the United States Government and the State of Texas, and may make contracts, leases, and agreements, with any such persons, corporation or entities for the acquisition, financing, construction or operation of any facilities in, connected with or incident to any such park. Any and all contracts, leases and agreements herein authorized, to be effective, shall be approved by resolution of the Joint Board and shall be executed by its Chairman or Vice-Chairman and attested by its Secretary or Treasurer.

**Suits; Title to Properties; Levy of Tax**

Sec. 11. Such Joint Board shall constitute a body corporate and politic, and shall have the right to sue and be sued in its own name. Title to the park or parks and all properties and facilities relating thereto shall be vested in the Joint Board. The Joint Board shall not have the power to levy a tax for any purpose.

**Revenue Bonds**

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip and repair such park or parks, or for the acquisition by construction or otherwise of any facilities to be used or connected with or incident to any such park or parks, or for any one or more of such purposes, the Joint Board shall have the power from time to time and is hereby authorized by resolution (hereinafter sometimes called the "Resolution"), to issue bonds, which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and all other laws of Texas. Included but without limiting, among the permanent improvements and facilities which may be acquired through the issuance of Bonds are the following: stadia, coliseums, auditoriums, athletic fields, pavilions and buildings and grounds for assembly, together with parking facilities and other improvements incident thereto. Such Revenue Bonds shall be issued in the name of the Joint Board, shall be signed by the Chairman of the Joint Board and attested by the Secretary, or the facsimile signature of either or both may be printed thereon, and the seal of the Joint Board shall be impressed, printed or lithographed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold by the Joint Board at a price and under terms determined by the Joint Board to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Resolution authorizing the issuance of the bonds shall prescribe the details as to the Bonds. It may contain provisions for the calling of the Bonds for redemp-

tion prior to their respective maturity dates at such prices and at such times as may be prescribed in such Resolution, but except for such rights of redemption expressly reserved in the Resolution and in the Bonds they shall not be subject to redemption prior to their scheduled maturity date or dates. The bonds may be made payable at such times and at such places, within or without the State of Texas, as may be prescribed in the Resolution, and they may be made registrable as to principal, or as to both principal and interest.

(b) The Bonds may be issued in one or more series from time to time as required for carrying out the purposes of this Act.

(c) The bonds may be secured by a pledge of all or a part of the net revenues from such park or parks, or the facilities thereof and incident thereto, or by a pledge of the net revenues both from said park or parks and said facilities or any one or more thereof. The net revenues of any one or more contracts, operating contracts, leases or agreements theretofore or thereafter made or to be made, may be pledged as the sole, or as additional security, for the support of the bonds. The bonds may be additionally secured by a mortgage upon any or all of the real and personal property owned and to be owned by the Joint Board. In any such Resolution the Joint Board may reserve the right under conditions therein specified to issue additional bonds which will be on a parity with, or subordinate to the bonds then being issued.

(d) The term "Net Revenues" as used in this Section and in this Act shall mean the gross revenues from the park or the parks, and the facilities thereof, leases, agreements and contracts, and incidents thereto, or from any one or more thereof, whose revenues shall have been thus pledged, after deduction of the necessary expenses as defined in Section 14 hereof.

(e) From the proceeds of the bonds the Joint Board may set aside, as shall be prescribed in the Resolution, an amount for payment of interest estimated to accrue during the construction period and in addition thereto such reserve for the interest and sinking fund as may be deemed proper. From the proceeds of the bonds all expenses necessarily incurred in issuing and in selling the revenue bonds shall be paid. The remainder of such proceeds shall be used for the purposes specified in the Resolution.

(f) Said bonds shall never be construed to be a debt of either of the two (2) such counties, or of the two (2) such counties jointly or collectively, or of the State of Texas, or of the individual members of the Joint Board, but shall be payable solely and only from the income and properties of the Joint Board. Each bond shall contain on its face substantially the following provisions:

The holder hereof shall never have the right to demand payment of this obligation

out of any funds raised or to be raised by taxation.

(g) So long as any of the bonds are outstanding no additional bonds of equal dignity shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Resolution.

(h) Before any such bonds are delivered to the purchaser they shall be submitted to the Attorney General along with the record pertaining thereto for his examination and approval. It shall be the duty of the Attorney General to approve the bonds when issued in accordance with this Act. Bonds thus approved by the Attorney General and registered within the office of the Comptroller of Public Accounts shall be incontestable.

#### Refunding Bonds

Sec. 13. Bonds which likewise will be fully negotiable, may be issued by Resolution adopted by the Joint Board for the purpose of refunding bonds issued under this Act. The refunding bonds may be secured in the manner provided in this Act, for securing original bonds. Such refunding bonds may be sold and the proceeds used to retire the original bonds, or may be issued in exchange for the original bonds, as may be provided in the Resolution authorizing their issuance.

#### Expenses; Rates, Charges and Tolls

Sec. 14. (a) The expense of operation and maintenance of facilities whose revenues are pledged to the payment of the bonds shall always be a first lien on and charge against the income thereof. So long as any of said bonds or interest thereon remain outstanding the Joint Board shall charge or require the payment of fees and tolls for the use of such facilities which shall be equal and uniform within classes defined by the Joint Board and which shall yield revenues at least sufficient to pay the expenses of such operation and maintenance, and to provide for the payments prescribed in the Resolution for "Debt Service" as that term may be defined in the Resolution (which without limitation may include provisions for any or all of the following: The payment of principal and interest as such principal and interest respectively mature, the establishment and maintenance of funds for extensions and improvements, and operating reserve, and an interest and sinking fund reserve).

(b) The Joint Board is authorized to determine the rates, charges and tolls which must be charged by it for the use, operation or lease of such facilities.

#### Provisions Applicable to Bonds

Sec. 15. The following provisions shall be applicable as to bonds issued under this Act:

(a) It shall be the duty of the Joint Board to fix such tolls and charges for the use of the facilities whose revenues are thus pledged as will yield revenues fully sufficient to operate and maintain such facilities and to permit full compliance by

the Joint Board with the covenants contained in the Resolution for the making of payments in the Debt Service Fund, including payments into any reserve accounts or funds created in the Resolution in connection with the issuance of the bonds. In the event that any part of the security for the bonds consists of money to be received by the Joint Board as consideration for facilities belonging to the Joint Board but operated by another or others under some form of lease or operating contract, it shall be the duty of the Joint Board to fix and authorize rates, charges and tolls to be made by such person or persons for services to be rendered by such facilities, at least sufficient to assure the receipt by the Joint Board of money which the Joint Board is committed to pay from such source for Debt Service under the terms of the Resolution.

(b) The proceeds of the bonds shall be used and shall be disbursed under such restrictions as may be provided in the Resolution, and there shall be and there is hereby created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or of any trustee provided for in respect to such bonds, but neither the depository of such funds nor the trustee shall be obligated to see to the proper application of such fund except as expressly provided in the Resolution or in the indenture securing the bonds. Any surplus remaining from the bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Resolution, and the creating of any reserve fund prescribed in the Resolution, and the accomplishment of the bond purpose, shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, or be retained for future expansion or improvements.

(c) The Resolution may provide that such bonds shall contain a recital that they are issued pursuant to and in strict conformity with this Act and such recital when so made shall be conclusive evidence of the validity of the bonds and the regularity of their issuance.

(d) Any Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas, or by any municipal corporation, county, or other political subdivision or taxing district of the state.

(e) If so provided in the Resolution, an indenture securing the bonds may be executed by and between the Joint Board and a corporate trustee, and such Resolution may provide also for execution of the indenture by a corporate or individual co-trustee. In addition to the pledge of revenues, the indenture may grant a mortgage or deed of trust lien on all or any part<sup>1</sup>

real and personal property of the Joint Board theretofore and thereafter acquired. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having trust powers.

(f) Either the Resolution or such indenture may contain such provisions for protecting or enforcing the rights or remedies of the bondholders as may be considered by the Joint Board reasonable and proper and not in violation of law, including covenants setting forth the duties of the Joint Board in reference to maintenance, operation or repair, and insurance (including within the discretion of the Joint Board insurance against loss of use and occupancy) of the facility whose revenues are pledged and the custody, safeguarding and application of all moneys received from the sale of the bonds, and from revenues to be received from the operation of the project.

(g) It shall be lawful for any bank or trust company in this state to act as depository for the proceeds of the bonds or revenues derived from the operation of facilities whose revenues may be pledged, or for the special funds created to assure payment of principal and interest on the bonds, including reserve funds and accounts, or for one or more of such classes of deposits, and to furnish such indemnity bonds or to pledge such securities as may be required by the Joint Board.

(h) The Joint Board may select such depository or depositories without the necessity of seeking competitive bids. Such deposits shall be secured in the manner required by law for the security of money belonging to counties. Provided, that the Joint Board in the Resolution or the indenture securing the bonds may bind the Joint Board to the use of direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government as security for such deposits. Such indenture or Resolution may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. The Resolution may contain all other suitable provisions such as the Joint Board may deem reasonable and proper for the security of the bondholders, including but without limitation covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared to be due before maturity, and as to the rights, liabilities, powers and duties arising from the breach by the Joint Board of any of its duties or obligations.

(i) That any holder or holders of the bonds issued hereunder, including a trust-

tee or trustees for such holders, shall have the right in addition to all other rights, by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the Joint Board or its employees, the agents and employees thereof, or any lessee of any of said facilities whose revenues are pledged, including but not limited to the right to require the Joint Board to impose and establish and enforce sufficient and effective tolls and charges to carry out the agreements contained in the Resolution and indenture, or in both the Resolution and indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and in the event of default, as defined in the Resolution authorizing the bonds or in the indenture securing the bonds to apply for and obtain the appointment of a receiver for any of the properties involved. If such receiver be appointed he shall enter and take possession of the facilities mortgaged and whose revenues shall have been pledged and until the Joint Board may be no longer in default, or until relieved by the court, retain possession of the properties involved and collect and receive all revenues and tolls arising therefrom, and make and renew contracts and leases with approval of the court, in the same manner as the Joint Board itself might do, and shall dispose of all such moneys and apply same in accordance with the obligations of the Joint Board under the Resolution or indenture, and as the court may direct.

(j) The Resolution or the indenture securing the bonds may contain provisions to the effect that so long as the revenues of such park facilities are pledged to the payment of bonds no free service shall be rendered by any of such facilities of the park for which tolls, charges and rentals are to be effective under the Resolution.

(k) All such bonds shall be and are hereby declared to be legally authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all municipal corporations, counties, political subdivisions, public agencies, and taxing districts within the State of Texas, and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

(l) The provisions contained in the Resolution and in the indenture and the applicable provisions of this Act shall constitute an irrevocable contract between the Joint Board and the holders of such bonds.

<sup>1</sup> So in enrolled bill.

Leases or Operating Agreements Made Prior to, or  
Concurrently With, Authorization of Bonds

Sec. 16. At any time prior to the authorization of bonds secured by a pledge of the revenues from any designated facility or facilities of the park or parks, the Joint Board may, for such period of time as it may determine, make a contract or lease agreement with a company, corporation, or individual for the operation of such facility, or facilities, the consideration for such contract or lease agreement to be specified, or the method of determining such consideration to be prescribed in such contract or lease agreement. The revenues from any such contract or agreement may be pledged in the Resolution or indenture as security or additional security for the revenue bonds. Any such facility or facilities may likewise be leased under such contract or lease agreement concurrently with the authorization of the issuance of said bonds, and the revenues therefrom pledged as security or additional security for the bonds; and in the event that issuance of said bonds is authorized concurrently with the contract or lease agreement then the revenues from such contract or agreement shall constitute security for the bonds. Such contract or agreement must provide that the rentals, tolls and charges to be enforced by such lessee for the use or services provided by such facility or facilities shall be sufficient at least to yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of such facility or facilities, plus an amount which will assure income to the Joint Board to permit and assure payments into the several funds and accounts in the manner, at the times and in the amounts specified in the Resolution. Any such lease agreement or contract may provide that such rentals, tolls and charges may be sufficient to yield a reasonable profit to the other party to the lease agreement or contract, but to be realized only after payment in full of the obligation to the Joint Board; any such operating or lease contract may provide for payment of the annual consideration or rental in monthly installments approximately equal and that failure to pay any required sum when due may be declared to be a breach of contract or agreement, entitling the Joint Board under regulations prescribed therein to declare the contract or agreement forfeited and to take over the operation and maintenance of such facility or facilities, but such remedy shall be cumulative of all others therein provided or recognized. The Joint Board may, in the alternative, reserve the right under conditions specified in the Resolution or Trust Indenture to make such lease after issuance of the bonds.

Annual Financial Statement; Form; Proposed Budget;  
Operation and Maintenance Expenses

Sec. 17. Before July 1st of each year the Joint Board shall prepare and not later than July 1st, file with the County Clerk of each of the two (2) such counties, a complete state-

ment showing the financial status of the Joint Board, its properties, funds and indebtedness. The statement shall be so prepared as to show separately all information concerning the bonds, the income from pledged facilities, and expenditures of such revenues, and all information concerning any moneys which might have been appropriated to the Joint Board by the Commissioners Court of each of the two (2) such counties for operational and maintenance expenses. Concurrently with the filing of such statement, the Joint Board shall file with the County Clerk of each of the two (2) such counties a proposed budget of its needs for the next succeeding calendar year. It shall be the duty of the Joint Board to so operate said park or parks that there will be available from the gross revenues received from the operation of park facilities whose revenues are pledged to the payment of bonds money sufficient to pay the operation and maintenance expenses of said facilities.

#### Rules and Regulations

Sec. 18. The Joint Board shall have the power to adopt and promulgate all reasonable regulations and rules, applicable to tenants, concessionaires, residents and users of park facilities, regulating hunting, fishing, boating and camping and all recreational and business privileges in any such park or parks.

#### Acceptance of Grants and Gratuities

Sec. 19. The Joint Board is hereby authorized to accept grants and gratuities in any form from any source approved by the Joint Board and the Commissioners Court of each of the two (2) such counties including the United States Government or any agency thereof, the State of Texas or any agency thereof, any private or public corporation; and any other person, for the purpose of promoting, establishing and accomplishing the objectives and purposes and powers herein set forth.

#### Exercise of Powers by Commissioners Court

Sec. 20. (a) In the event the County Commissioners Court of either of the two (2) such counties as hereinbefore defined, does not pass a Resolution authorizing the establishment of such Joint Board of Park Commissioners, the establishment of such Joint Board shall not be consummated.

(b) In the event the establishment of any such Joint Board of Park Commissioners be declared by the courts to be invalid, then the County Commissioners Courts of the two (2) such counties, acting jointly and together, are hereby expressly granted the right to ratify any or all of the actions taken by such Joint Board prior to the declaration of the invalidity of said Joint Board's establishment and to exercise any and all of the powers, acts and authority by this Act conferred, authorized and delegated to said Joint Board of Park Commissioners.

#### Law Cumulative; Conflict With Other Laws

Sec. 21. This Act is cumulative of all other laws relating to county parks or to parks operated jointly by two (2) adjacent counties as hereinbefore defined, but this Act shall take precedence in the event of a conflict.

#### Partial Invalidity

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1959, 56th Leg., p. 234, ch. 137; Acts 1961, 57th Leg., p. 960, ch. 419, §§ 1 to 8.]

#### Art. 6079f-1. Cities; Sale and Conveyance of Land to Joint Board of Park Commissioners

Sec. 1. This Act shall be applicable to all cities contained in any county which has, in conjunction with an adjoining county, created a Joint Board of Park Commissioners under the provisions of Chapter 137, Acts of the Fifty-sixth Legislature.<sup>1</sup>

Sec. 2. Any such city may sell and convey any land owned by it to such Joint Board of Park Commissioners or to such counties, provided the governing body of the city finds that such land will not be required for city purposes. The sale and conveyance may be authorized by ordinance passed by the governing body of the city, and no election shall be required.

[Acts 1961, 57th Leg., p. 810, ch. 369.]

<sup>1</sup> Article 6079f.

### 6. CITY PARKS

#### Art. 6080. City Parks

The governing body of any incorporated city may purchase, improve and maintain land for use as city parks. Such parks shall not exceed two in number for each two thousand inhabitants. If such body establishes more than one of such parks, it shall locate them in widely separated parts of the city. Such body is authorized to levy and collect a tax not to exceed five cents on each one hundred dollars of its assessed valuation for the purchase and improvement of lands for use as such parks, and may levy and collect a like annual tax to properly maintain such parks. Said body shall have full power and authority over all such parks, and may build and construct such building as they may deem necessary, lay out and open driveways and walks, pave any part thereof, construct ditches or lakes, set out trees and shrubs, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules as said body may prescribe.

[Acts 1925, S.B. 84.]

### Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

### Art. 6081. Concessions in City Park

No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the governing body, or its authorized agent, paying for such privilege or concession the sum agreed upon with said body or its agent. All revenue from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks.

[Acts 1925, S.B. 84.]

### Art. 6081a. Sale or Exchange by City of Park Property

Any incorporated city in this State having a population of less than 45,000 according to the 1920 United States census and a city of more than 43,000 population, according to said census; is hereby authorized to sell any real property heretofore dedicated as a public park in said city which has never been used for public park purposes on account of its location and surroundings being unsuitable for such use, provided such dedication was not made by the State of Texas. Any such property may be sold by the city or exchanged for other real property within the city limits. Provided that in event of a sale the proceeds thereof shall be used exclusively for the purpose of acquiring other real property in the city to be used as a public play ground and in event of an exchange of such property for other property the property acquired shall be used as a public play ground. Provided further, that the purchaser of any property sold or exchanged as herein authorized shall not be responsible for the application or use of the proceeds or the property received, for such property, and in event of misapplication thereof the title to the property sold by the City shall not in any way be affected.

[Acts 1929, 41st Leg., p. 48, ch. 18, § 1.]

### Art. 6081b. Acquisition and Maintenance of Parks and Playgrounds Outside Limits of Certain Cities

#### Application

Sec. 1. That the governing body of any incorporated city in this State having more than 43,000 inhabitants according to the United States census of 1920, which city is

in a county having a population of less than 100,000 inhabitants according to said census may receive through gift or dedication and is hereby empowered to, by purchase without condemnation or by purchase through condemnation proceedings, acquire and thereafter maintain and conduct for the use of the public [as] recreational parks or playgrounds, either or both, tracts of land without the corporate limits of such city, no one of such parks or playgrounds which may be acquired by purchase or through condemnation proceedings to exceed 320 acres in area and the total acreage outside the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall never exceed 640 acres.

#### Bonds; Taxes

Sec. 2. For the purpose of condemning or purchasing without condemning, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such section may issue negotiable bonds of the city and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy the collection of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

#### Control and Management

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly authorized and empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix such reasonable charges as the board shall deem fit for the use of such recreational facilities by members of the public, all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill or lack of care on the part of any governing board, officer, servant, employee, or other person with reference to the construction, improvement, management, conduct, or maintenance of any such park or playground or any improvement, structure or thing of any character whatever located therein or connected therewith.

Special Tax

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and sinking funds of any bonds issued under the authority of this Act, the governing body of any city falling within the terms hereof may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each one hundred dollars of the assessed value of the taxable property within the city for the purpose of acquiring any such parks or playgrounds, either or both, and such governing body may and is hereby further empowered to levy and collect an annual special tax not to exceed five cents on each one hundred dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act and to provide, improve, maintain and conduct for use in connection therewith all such suitable recreational facilities and structures and other things as such governing body may deem fit. Provided that nothing contained in this Act shall be construed as authorizing any city to exceed the limits of indebtedness placed upon it under the Constitution.

Keeping Open; Concessions

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation shall have the right to, in any such park or playground offer anything for barter or sale, or exhibit anything for pay or conduct any place of amusement for which a fee is charged or render personal service for hire without having first obtained from such governing body the privilege of so doing under such rates of payment therefor and other terms as may be agreed upon with such governing body and all revenues arising from the sales of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

Repeal; Act Cumulative

Sec. 6. Nothing contained in this Act shall be construed as repealing any provisions of any special charter of any incorporated city, but shall be deemed and held to be cumulative thereof.

Closing of Roadways

Sec. 7. Any roadway upon which land acquired for park purposes under the provisions of this Act abuts on both sides may be closed by order of the commissioners court

of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason of previous dedication shall be cancelled and surrendered back to the county.

[Acts 1929, 41st Leg., p. 272, ch. 120.]

Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

Art. 6081c. Development by Certain Cities of Lands Owned Outside Limits for Parks and Playgrounds

Sec. 1. That whenever any incorporated city having a population of more than 43,000 according to the United States census of 1920, in any county having a population of less than 100,000 according to said census may own land without its limits, and devoted to use as a public park or playground, either or both, and which may be contiguous to any land owned by the county in which such city is situated and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city, upon such terms as may be agreed upon, the lands so owned and held by the county, the same to be acquired by the city to be used exclusively in connection with its adjacent or contiguous lands devoted to park or playground purposes, either or both, and the land so acquired to be devoted to a like use; or the governing body of such city may sell to and the Commissioners' Court thereof may buy for such county, upon such terms as may be agreed upon, the lands so owned and held by the city, the same to be acquired by the county for the exclusive use in connection with its adjacent or contiguous lands devoted to use as a public park and to be devoted only to such purpose; provided, however, that in all cases of such sales the minimum consideration which may be agreed upon shall be adequate to pay, or provide for the payment of any portion of any unmatured bonded indebtedness which may have been incurred by the seller in originally acquiring the land so sold, all sums to the credit of the sinking fund of such indebtedness to be deducted from the face value of the unmatured bonds in determining the outstanding indebtedness within the meaning of this Act, and this provision to in no wise be deemed as prohibiting any agreement upon a greater consideration for the property.

Sec. 2. That whenever the governing body of any incorporated city may have under its management and control any property outside of the limits of such city and devoted to use as a public park or playground, either or both,

and there may be adjacent or contiguous there-to property devoted to use as a public park under the control and management of the Commissioners' Court of the county in which such city is situated, the governing body of such city and the Commissioners' Court of such county may, and they are hereby expressly authorized to, by lease or otherwise, upon such terms and for such period as they may determine, provide for the single management, conduct and control of such contiguous or adjacent properties for the benefit of the public and for the uses to which the same may have been devoted, by vesting the exclusive management, maintenance, conduct and control thereof in either the governing body of the city or the Commissioners' Court of the county, as may be agreed upon, the vesting of such exclusive management and control in one of such bodies to in no wise affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds, or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

Sec. 3. Any roadway upon which land acquired for park purposes under the provision of this Act abuts on both sides may be closed by order of the Commissioners' Court of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason of previous dedication shall be cancelled and surrendered back to the county.

[Acts 1929, 41st Leg., p. 274, ch. 121.]

#### Art. 6081d. Condemnation or Purchase of Lands Without City Limits for Parks and Playgrounds

##### Acquisition of Lands Outside Territorial Limits

Sec. 1. That the governing body of any incorporated city in this State may receive and hold through gift or under dedication, and is hereby empowered to condemn or to purchase lands without its territorial limits and within the county in which such city is situated for the purpose of establishing and maintaining thereon public recreational parks and playgrounds, either or both, no one of such parks or playgrounds which may be acquired by purchase or through condemnation to exceed 320 acres in area and the total acreage outside of the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall not exceed 640 acres.

##### Bonds and Taxes Authorized

Sec. 2. For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such Section may issue negotiable bonds of the city and levy taxes to provide for the interest and Sinking Funds of bonds so

issued, the authority hereby given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

##### Management and Control of Parks and Playgrounds

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix and collect such reasonable charges as the governing body shall deem fit for the use of such facilities by members of the public; all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing board, officer, servant, employee or other person with reference to the construction, management, conduct, or maintenance of any such park or playground or any improvement, structure, or thing of any character whatsoever located therein or connected therewith.

##### Special Ad Valorem Tax Authorized

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and Sinking Fund of any bonds issued under the authority of this Act and of any taxes which may be authorized to be levied and collected for the acquisition or maintenance of parks or playgrounds within the limits of the City, the governing body of any city falling within the terms hereof may and is empowered to levy and collect a Special Ad Valorem Tax not to exceed for any one year five cents on each One Hundred Dollars of the assessed value of the taxable property subject to taxation by the city for the purpose of acquiring any park or playground, either or both, authorized by the terms of this Act to be acquired, and such governing body is hereby further authorized to levy and collect an annual Special Ad Valorem Tax not to exceed five cents on each One Hundred Dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act, and to provide, improve, maintain and conduct for use herein and in connection therewith all such suitable recreational facilities and structures and other

things as such governing body may deem fit. Provided, that no tax shall be attempted to be levied or collected in violation of any limit or restriction placed upon the taxing power of the city by the Constitution.

**Regulations of Use; Privileges or Concessions**

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall be open to the use of the public under such reasonable rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation, shall have the right in any such park or playground to offer anything for barter or sale, or exhibit anything for pay or conduct any place of amusement for which an admission fee is charged or render personal service or transportation of any character for hire without having first obtained from such governing body the privilege of so doing under such rates of payment therefor and such other terms and conditions as may be agreed upon with such governing body, and all revenues arising from the grants of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

**Powers Additional to Charter Powers**

Sec. 6. Nothing herein contained shall be construed as repealing any provisions of any special charter of any incorporated city, but the powers, terms and provisions hereof shall exist as alternative powers, terms and provisions of any such special charter and any city which shall hereafter adopt or amend its own charter under the terms of the Home Rule provisions of the Constitution may provide in any such charter or amendments thereto provisions on the subject covered hereby other than and differing from those herein provided.

**Purchase or Sale of Adjoining Park Lands by City or County**

Sec. 7. Whenever any incorporated city may own land without its limits and devoted to use as a public park or playground, either or both, and which may be contiguous or adjacent to any land owned by the county in which such city is situated, and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city upon such terms as may be agreed upon the lands so owned and held by the county or the Commissioners' Court of such county may purchase for the county and the governing body of the city may so sell to the county the lands owned by the city any such land so purchased to be used by the purchaser exclusively in connection with its contiguous or adjacent lands devoted to playground or park purposes and the land so acquired to be devoted to like use. Provided, however, that in all cases of such sales the

minimum consideration which may be agreed upon shall be adequate to pay, or to provide for the payment of, any portion of any outstanding bonded indebtedness which may have been incurred by the seller in originally acquiring the land sold, all sums to the credit of the Sinking Fund of such indebtedness to be deducted from the face value of the unpaid bonds in determining the outstanding indebtedness within the meaning of this Act and this provision in no wise to be deemed as prohibiting any agreement upon a greater consideration for the sale of the property.

**Lease of Contiguous Lands by City or County**

Sec. 8. Whenever any county and city situated therein may separately own contiguous or adjacent lands as described in the preceding section, the governing body of such city and the Commissioners' Court of such county may by lease, or other arrangements, upon such terms and for such period as they may determine provide for the single management, conduct, and control of such contiguous or adjacent properties in their entirety for the benefit of the public as a recreational park or playground by vesting the exclusive management, maintenance, conduct and control thereof either in the governing body of the city or the Commissioners' Court of the county as may be agreed upon, the vesting of such exclusive management and control in one of such bodies in no wise to affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

**Closing Roads Through Lands Acquired**

Sec. 9. Any roadway upon land acquired by any city under authority of this Act for the purposes herein prescribed or upon which there abut both sides lands of any city and county the exclusive control of which may be vested in the one or the other under the terms hereof may be closed by order of the Commissioners' Court of the county in which such roadway is located and thereafter all rights which the State may have in and to such roadway shall be considered as terminated and surrendered to the county or city as the case may be.

[Acts 1931, 42nd Leg., p. 105, ch. 70.]

**Repeal of Ad Valorem Tax Limitation**

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

### Art. 6081e. Acquisition of Lands and Buildings for Parks, Playgrounds, Historical Museums and Sites

#### Authorization to Acquire Lands and Buildings

Sec. 1. Any county or any incorporated city of this state, either independently or in cooperation with each other, or with the Texas State Parks Board,<sup>1</sup> may acquire by gift, devise, or purchase or by condemnation proceedings, lands and buildings, to be used for public parks, playgrounds or historical museums, or lands upon which are located historic buildings, sites, or landmarks of state-wide historical significance associated with historic events or personalities or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, or sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical buildings, markers, monuments, or other historical features, such lands to be situated in any locality in this state and in tracts of any size which are deemed suitable by the governing body thereof, situated within the state either within or without the boundary limits of such city, but within the boundary limits of said county and within the limits of said county wherein said city lies or is situated. Any county or incorporated city of this state, either independently or in cooperation with each other, may acquire by gift or purchase any historic book, painting, sculpture, coin, or collections of any such objects, or collections of any kind, of historical significance to such city or county or combinations of cities and counties.

<sup>1</sup> Abolished. See Penal Auxiliary Laws, Art. 978f-3a.

#### Eminent Domain

Sec. 1A. The right of eminent domain conferred above as relating to historical sites, buildings, and structures shall not be exercised except upon a proper showing that it is necessary to prevent destruction or deterioration of the historical site, building or structure.

#### Bonds and Taxes

Sec. 2. To purchase and/or improve lands, buildings, or historically significant objects for park purposes or for historic and prehistoric preservation purposes, an incorporated city and/or county may issue bonds, and may levy a tax not exceeding ten cents (10¢) on the One Hundred Dollars (\$100) valuation of taxable property in such city and/or county to pay the interest and provide a sinking fund to retire such bonds, the issuance of such bonds, and the collection of taxes in payment thereof to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of 1925, governing the issuance of bonds by cities, towns and/or counties in this state; this Section shall be construed to authorize the levying of said tax not exceeding ten cents (10¢) on the One Hundred Dollars (\$100) of valuation notwithstanding the provisions of Article 6080 of the Revised Civil Statutes of 1925.

#### Validation of Bond Issues

Sec. 2a. That where a majority of the resident property taxpayers, being qualified electors of any city, town and/or county in this state, voting on the proposition having voted at an election held in such city, town and/or county in favor of the issuance of bonds of such city, town and/or county the levy of taxes upon the taxable property therein, for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purposes of purchasing and improving lands, buildings, or historically significant objects, for a public park, historical museum, or historic or prehistoric site in and for said city, town and/or county, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, town and/or county by ordinance or resolution adopted and recorded in its minutes, authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of taxes upon taxable property in such city, town and/or county to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity under the authority of Section 2, Chapter 148, of the General Laws passed by the 42nd Legislature at its Regular Session in 1931, and such bonds having been approved by the Attorney General and registered by the Comptroller of the State of Texas, each such election, and all Acts and proceedings had and done in connection therewith by the governing body of such city, town and/or county in respect of such bonds and the levy of such taxes, are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city, town and/or county to adopt all orders, resolutions and ordinances, and to do all other and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in said city, town and/or county for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park purposes shall never reach an amount where the tax of ten cents (10¢) on the One Hundred Dollars (\$100) valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity, and the amount of bonds issued for park purposes under Acts passed prior to the enactment of Chapter 148, of the General Laws, passed by the 42nd Legislature at its Regular Session in 1931, shall be computed and estimated in the amount of bonds which may be issued by any city, town and/or county for park purposes; it being the intent of said Chapter 148 to repeal all laws, and parts of laws, in conflict therewith.

## Certain Cities Authorized to Issue Bonds and Levy Taxes

Sec. 2b. That where a majority of the resident property taxpayers, being qualified electors of any city in this state having a population of not less than 1525 and not more than 1550 according to the last preceding Federal Census, and by any city having a population of not less than 4400 and not more than 4500 according to the last preceding Federal Census, voting on the proposition, having voted at an election held in such city in favor of the issuance of bonds of such city, and the levy of taxes upon taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purpose of park improvements, historical museum improvements, or the improvement of historic or prehistoric sites in and for such city, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, and the governing body of such city, by ordinance or resolution adopted and recorded in its minutes, having authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and provided for the levy of taxes upon the taxable property in such city to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, each such election and all acts and proceedings had and done in connection therewith and in respect of such bonds and the levy of such taxes by the governing body of such city are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city to adopt all orders, resolutions and ordinances and to do all and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in such city for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park improvements shall never reach an amount where the tax of ten cents (10¢) on the One Hundred Dollars (\$100) valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity.

## Management and Control of Parks, Historic Sites and Museums

Sec. 3. All parks acquired by authority of this Act shall be under the control and management of the city or county acquiring same or by the city and county jointly, where they have acted jointly in acquiring same, provided that the Commissioners Court and the city commission or city council may, by agreement with the State Parks Board, turn the land over to the State Parks Board to be operated as a public park, the expense of the improvement and operation of such park to be paid by the county and/or city, according to the agreement

to be made between such municipalities and the State Parks Board. All historic or prehistoric sites, historical museums or historically significant objects acquired by authority of this Act shall be under the control and management of the city or county acquiring same or by the city and county jointly, where they have acted jointly in acquiring same.

All counties and incorporated cities are authorized to levy a tax of not exceeding five cents (5¢) on the One Hundred Dollars (\$100) property valuation to create a fund for the improvement and operation of such parks.

## Sale or Lease of Concessions

Sec. 4. The management in charge of any park, historical museum, or historic or prehistoric site, created by authority of this Act shall have the right to sell and lease concessions for the establishment and operation of such amusements, stores, filling stations and all such other concerns as are consistent with the operation of a public park or the preservation of the noteworthy features of a historic or prehistoric site or historical museum, the proceeds of such sales and rentals to be used for the improvement and operation of the park.

## Public Use of Parks, Playgrounds, Historical Museums and Sites; Cooperation of State Parks Board

Sec. 5. All parks, playgrounds, historical museums and their contents, or historic or prehistoric sites acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body or bodies having the control and management of the same may from time to time prescribe. The Texas State Parks Board is hereby authorized to cooperate with any city and/or county in the acquisition and establishment of parks and playgrounds, and the Texas State Parks Board is hereby authorized to make such rules and regulations for the acquisition, establishment and operation of such parks and playgrounds with any city or county as said State Parks Board and city or county may deem advisable, and provided that the Governor and the State Prison Board may permit the use of state convicts for the improvement and maintenance of such parks under such provisions as may be made by the State Parks Board with said cities and/or counties.

[Acts 1931, 42nd Leg., p. 248, ch. 148; Acts 1935, 44th Leg., p. 38, ch. 15, §§ 1 to 3; Acts 1937, 45th Leg., 2nd C.S., p. 1866, ch. 3, § 1; Acts 1941, 47th Leg., p. 645, ch. 389, § 1; Acts 1963, 58th Leg., p. 619, ch. 227, § 1, eff. Aug. 23, 1963.]

## Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

**Art. 6081f. Authority of Counties, Cities, Towns and Villages to Operate and Maintain Parks**

Sec. 1. All counties and all incorporated cities, towns, and villages of this State shall be authorized to operate and maintain parks.

Sec. 2. All counties and all incorporated cities, towns, and villages of this State shall be authorized to acquire or improve, or both, land for park purposes and to issue negotiable bonds therefor, and to assess, levy, and collect ad valorem taxes to pay the principal of and interest on such bonds, the authority hereby given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of Texas of 1925, as amended.

Sec. 3. There shall be no limitation on the amount of ad valorem taxes, or the assessment, levy, and collection thereof, to pay park operation and maintenance expenses, or to pay the principal of and interest on such park bonds, except for those ad valorem tax limitations imposed by the provisions of the Constitution of the State of Texas.

Sec. 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict; and specifically, all ad valorem tax limitations for any park or park bond purposes contained in any laws of the State of Texas, including Article 6080 of the Revised Civil Statutes of Texas of 1925; Chapter 120, Acts of the 41st Legislature, Regular Session, 1929 (compiled as Article 6081b of Vernon's Texas Civil Statutes); Chapter 70, Acts of the 42nd Legislature, Regular Session, 1931 (compiled as Article 6081d of Vernon's Texas Civil Statutes); Chapter 227, Acts of the 58th Legislature, Regular Session, 1963 (compiled as Article 6081e of Vernon's Texas Civil Statutes); and Chapter 7, Acts of the 47th Legislature, Regular Session, 1941 (compiled as Article 6081g, of Vernon's Texas Civil Statutes) are hereby repealed and shall be of no further force or effect, but the remainder of such laws shall remain in full force and effect.

[Acts 1965, 59th Leg., p. 996, ch. 483, eff. Aug. 30, 1965.]

**Art. 6081f-1. Cities, Towns and Villages Prohibited From Establishing Streets, Alleys or Thoroughfares Through Parks; Exceptions**

From and after the effective date of this Act all cities, towns, and villages in the State of Texas are hereby prohibited from establishing or dedicating thoroughfares, public streets and/or alleys through any property now dedicated or used as a park or for public park purposes or that may hereafter be dedicated or used as parks or for park purposes, and which park or parks include land, the title to which is in the State of Texas on which is situated a building or buildings owned by the State of Texas and in the construction of which building or buildings the State has expended as

much as Fifty Thousand Dollars (\$50,000), but this Act shall not apply to the campus of any educational institution or to the grounds of any eleemosynary institutions, provided, however, that driveways may be maintained in such parks for park purposes only and not as general thoroughfares, and provided further that such thoroughfares, streets and/or alleys may be established only after the question of permitting such use has been submitted to a referendum vote of the people qualified to vote in such elections in such cities, towns, and villages and where said election has resulted in the majority having cast their vote for such use. When such election has been held and has resulted favorably to the opening of such thoroughfares, streets, and/or alleys then, and in that event and only in such event, shall the opening of such thoroughfares, streets, and/or alleys be lawful.

It being the purpose of this Act to prohibit the opening of thoroughfares, streets, and/or alleys in and through the parks located in the cities, towns, and villages of this State and such thoroughfares, streets, and/or alleys through such parks to be opened only after an election for that purpose has been approved by the legally qualified voters of such cities, towns, and villages.

[Acts 1939, 46th Leg., p. 530, § 1.]

**Art. 6081g. Cities of 60,000 or More Bordering on Gulf of Mexico Granted Use and Occupancy for Park Purposes of Tidelands and Waters**

**Right of Use and Occupancy Granted; Rights of City**

Sec. 1. Any city in this State bordering upon the Gulf of Mexico, which has or hereafter may have a population of sixty thousand (60,000) or more inhabitants as shown by the next preceding Federal Census taken before any action by such city is taken hereunder, shall have, and is hereby granted for park purposes, the right of use and occupancy of the tidelands between the lines of the ordinary high tide and the ordinary low tide of the Gulf of Mexico and the adjacent waters of the Gulf of Mexico, and the bed thereof, for a distance into and over the waters and bed of the Gulf of Mexico, of not over two thousand (2,000) feet from the line of ordinary high tide, between extensions into the Gulf of Mexico of property lines of property above and fronting upon the tidelands owned or acquired by the city for park purposes, or in or to which it has or may acquire easements, or other rights or privileges authorizing it to use and occupy the same for park purposes, and such city may declare abandoned for use as streets or highways and take, occupy and use for park purposes any lands, or parts thereof, theretofore dedicated as public streets or highways which because of submersion by the waters of the Gulf of Mexico or the building of a seawall, breakwater, or other structure, have become unfit for use as streets or highways, if so found and declared by the governing body of the city. Provided that the

distance between the extensions mentioned above shall never exceed one thousand (1,000) feet. Provided, however, that nothing in this Act contained shall be deemed as authorizing the taking of any private property or interest therein without compensation as required by the Constitution of the State of Texas.

The right of use and occupancy granted herein is upon the express condition that the State of Texas shall retain all of the oil, gas and other mineral rights in and under any of the land which it owns affected hereby.

The governing body of any such city shall have full rights of management and control of such tidelands, waters and bed of the Gulf of Mexico for park purposes to the extent allowed by this Act, including right and power on the part of such governing body, within its discretion, to acquire, erect, build and construct, repair, enlarge, extend, improve and remodel, furnish and equip and conduct, operate and maintain upon, over and into such tidelands and waters and bed of the Gulf of Mexico, a pier extending from the shore, with structures thereon to provide facilities for recreation, amusement, comfort, assemblies, and lodging of the public; provided, however, that no such city shall maintain and operate more than one such pier and no such pier shall extend into the Gulf of Mexico a distance in excess of two thousand (2,000) feet from the line of ordinary high tide, nor shall any such pier be constructed or maintained in any part of any channel deepened or improved for commercial navigation or between the shore line and any such channel, or in any arm, inlet, bay or body of water other than the main body of the Gulf of Mexico.

Without limiting the authority of the governing body of any city erecting or acquiring any pier as above authorized to determine the suitability of structures and facilities to be provided thereon for the purposes above authorized, it is hereby declared and enacted that for such purposes there may be erected, provided, operated and maintained thereon structures or facilities for any one or more of the following (the singular including the plural): theatre, restaurant, accommodations for overnight and transient guests, convention hall, dance hall, aquarium, exhibition hall, stadium for aquatic or other sports, concession and amusement devices stands or platforms, platform from which fishing may be carried on, together with walkways and rest room and toilet facilities and resting places, and other facilities for the convenience and comfort of the public; it being here expressly declared that the listing of the aforesaid structures and facilities is not intended to and shall not exclude other structures and facilities and uses reasonably adapted and suitable for park purposes upon, or in connection with, any such pier.

Acquisition of Privately Owned Lands for Park Purposes  
in Connection With Pier

Sec. 2. (a) That any city of the class defined in Section 1 hereof acquiring or erecting,

or to acquire or erect, any such pier, as is authorized in said Section 1, shall be, and is hereby, empowered to acquire by gift or purchase such privately owned land and rights in privately owned land within the limits of the city, for use for park purposes in connection with such pier as the governing body of the city may determine to be necessary.

(b) That any such city, through its governing body, is hereby authorized, and shall have the power, to enter into contracts upon such terms as it may deem to be to the best interest of the city in connection with said pier and its facilities, including, but without in any way limiting the generalization of the foregoing, lease contracts whereby said pier in whole or in part is leased to another party or parties (public agencies or otherwise), and operation contracts whereby said pier in whole or in part is to be operated by another party or parties (public agencies or otherwise). Any such lease contract or operation contract shall be authorized by ordinance or resolution adopted by the governing body of the city, and may cover any term of years not to exceed forty (40) years from the date thereof. All or any part of the proceeds to be derived by the city from any such contract may be pledged to the payment of revenue bonds issued by the city under Section 4 hereof. Among other things, any lease contract may provide that the lessee shall have the right to acquire or construct improvements or facilities, which (if so provided in said lease contract) will belong to the city at the termination of the period or periods covered by such lease contract.

Bonds and Taxes for Pier; Election

Sec. 3. For the purpose of obtaining funds to defray in whole, or in part, the costs of acquiring privately owned lands, if any, to be used in connection with any such pier or structure as is authorized in Section 1 hereof, and the cost of erecting, constructing, furnishing and equipping the same, any City of a class covered by this Act may borrow money and may issue its negotiable bonds and levy and collect annual ad valorem taxes not in excess of any Constitutional limitation sufficient to pay the interest on and provide a sinking fund for such bonds with which to pay them as they mature; provided, however, that the terms and requirements of Chapter 1, Title 22, Revised Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, shall apply to and govern the issuance of all such bonds; and provided, further, that when any bonds to be issued for a purpose herein authorized have heretofore been duly authorized at an election called and conducted in the manner prescribed and required by the aforesaid Chapter 1, Title 22, Revised Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, the governing body of the City wherein such election has been conducted may issue the bonds authorized at such election without another election thereon. If the governing body of the City so decides, the proceeds of bonds issued

under authority of this Section may be used to pay in part the cost of building, erecting, constructing, furnishing and equipping any such structures, or improvements as are authorized by this Act which, together with lands and interest in lands occupied by, or used in connection therewith, and the income therefrom may have been, or are to be mortgaged and encumbered for the purpose of providing funds with which to pay additional costs of acquiring, building, erecting, constructing, furnishing, or equipping the same; or for any one or more of such purposes.

**Mortgaging Pier, Equipment and Income**

Sec. 4. That for the purpose of obtaining funds for any of the purposes provided in Section 1 of, or elsewhere in, this Act, any city of the class defined in said Section 1, through its governing body, is hereby authorized, and shall have the power, from time to time, to issue bonds, notes or warrants secured by a pledge of and payable from the net revenues derived from the operation of all or any designated part or parts of such pier, structures, or improvements. As additional security for such bonds, notes or warrants, said city is hereby authorized, and shall have the power, to mortgage and encumber all or any designated part or parts of such pier, structures, or improvements and the furnishings and equipment thereof, together with all lands and interests, easements and other rights in land acquired or to be acquired and used in connection therewith, including the right of use and occupancy of the tidelands and waters and bed of the Gulf of Mexico herein granted (and, if the city now or hereafter owns, or has title to or rights in, the tidelands or bed of the Gulf of Mexico or the waters thereof, including said tidelands, bed, and waters and the rights therein). As further additional security for such bonds, notes or warrants, said city may, by the terms of any such mortgage, grant to the purchaser under sale or foreclosure thereunder a franchise to operate the properties purchased for a period of not over seventy-five (75) years after the purchase thereof; and during such period, in the case of any pier, structures, or improvements located at the time of said sale or foreclosure, wholly or in part, over and into state-owned tidelands and waters and bed of the Gulf of Mexico, such purchaser, his, their, or its heirs, successors or assigns shall have a like right of use and occupancy of said state-owned tidelands and waters and bed of the Gulf of Mexico in connection with such pier, structures or improvements for like purposes as are herein granted to the city, and such right of use and occupancy upon the termination of such period or upon the cessation of the use of the properties for such purpose occurring prior to the termination of such period shall revert to the city.

The power to issue bonds, notes and warrants payable from net revenues and the power to mortgage and encumber in this Section granted may be exercised as to property ac-

quired, built, erected, constructed, furnished or equipped for the purposes of this Act authorized, whether the entire cost thereof shall be defrayed wholly from the proceeds of revenue bonds, notes or warrants issued pursuant to this Section 4, or partly from such proceeds and partly with the proceeds from bonds or warrants issued under authority of Section 3 and Section 5 hereof, or either of them, or with funds obtained from any other lawful source.

All bonds issued under the authority of this Section shall be made payable to bearer or to the order of a named payee and shall be negotiable instruments and are hereby declared to have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> but shall be payable solely from the special fund herein provided, and, at the option of the city, additionally secured by the mortgage and franchise above authorized. Such bonds shall bear interest not exceeding six per cent (6%) per annum, have such dates and such maturities serially or otherwise not exceeding forty (40) years from their date or dates, be in such denominations and be payable as to principal and interest at such place or places (which may be at any bank, either within or without the state), in such medium of payment, contain such provisions for redemption prior to maturity and be in such form as the governing body of the city may determine. No such bond or the interest coupons appurtenant thereto bearing the signature or facsimile signature of any official of the city duly authorized to sign the same at the time such signature may be actually affixed thereto, shall be invalid by reason of such official ceasing to hold office prior to the delivery of such bond, or not having held office on the date of such bond.

Interest on such bonds may be payable in such manner as the governing body of the city may prescribe, and such bonds may in the discretion of the governing body of the city be made registrable as to principal and interest, or as to principal only, under such terms as the governing body may prescribe, or may be issued not subject to registration. Such bonds may be executed in the manner set forth in the proceedings authorizing the issuance of the same, and such proceedings may provide that the bonds and coupons, either or both, shall be executed by facsimile signatures and that the seal of the city on the bonds shall be the printed facsimile seal.

In the proceedings authorizing the issuance of such bonds, the governing body may prohibit the further issuance of bonds payable from the pledged revenues, or may reserve the right to issue additional bonds to be secured by a pledge of and payable from said net revenues in all respects on a parity with, or subordinate to, the lien and pledge in support of the bonds being issued, subject to such conditions as are set forth in said proceedings. When any bonds recite that they are secured partially or other-

wise by a pledge of the proceeds of a contract or contracts made between the city and another party or parties (public agencies or otherwise), including but without in any way limiting the generalization of the foregoing, lease contracts and operation contracts, a copy of such contract or contracts and of the proceedings authorizing the same shall be submitted to the Attorney General, and the approval by the Attorney General of the bonds shall constitute an approval of such contract or contracts, and thereafter the contract or contracts shall be incontestable except for forgery or fraud.

No obligation issued and secured under authority of this Section shall ever be a debt of the city issuing the same, but shall be solely a charge upon the income and properties encumbered and shall never be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law. Every such obligation shall contain substantially the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

The nature of the pledge of income and encumbrance of properties to secure any such obligations and the control, management and operation of such properties while any such obligation remains unpaid, shall be subject to and be governed by the provisions of Articles 1111 to 1118, both inclusive, Vernon's Texas Civil Statutes, as amended, in like manner as are parks and systems named in Article 1111, as amended; provided, that no election shall be necessary to authorize the issuance of bonds under this Section.

The governing body of the city is hereby authorized to provide by ordinance for the issuance of revenue refunding bonds of the city for the purpose of refunding any revenue bonds issued under the provisions of this Section and then outstanding, together with accrued interest thereon, interest on past due principal, interest on past due interest, and judgments of courts of competent jurisdiction pertaining to past due principal and interest. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof and the duties and powers of the city in respect to the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Such revenue refunding bonds may bear interest at a rate or rates higher than that borne by the underlying bonds, but such rate or rates to be borne by the revenue refunding bonds shall not exceed six per cent (6%) per annum.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

**Bonds Declared Negotiable Instruments; Legal Investments and Security for Deposit of Public Funds**

Sec. 4a. All bonds issued under this Act (both tax bonds and revenue bonds) shall be and are hereby declared to be, and to have all

the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> and all such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporation or subdivision of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

**Additional Taxes; Limitation on Rate**

Sec. 5. In addition to any taxes authorized for the purpose of paying the interest on and principal of any bonds issued under authority of Section 3 hereof, the governing body of any City building or acquiring a pier, structure or improvements with proceeds of bonds or warrants issued under authority of Sections 3 and 4 hereof, either or both, shall have and is hereby given the power to levy and collect annual ad valorem taxes of, and at a rate not to exceed Five (5¢) Cents in any one (1) year on each One Hundred (\$100.00) Dollars valuation of taxable property in such City for the purpose of defraying in part the cost of acquiring, building, constructing, erecting, furnishing or equipping such pier, structure, or improvement or the cost of land, or interest in land to be used in connection therewith, or for the purpose of repairing, enlarging, extending, altering or improving the same after completion; and within its discretion, such governing body for such purposes, or any of them, may issue interest-bearing time warrants of the City to be payable from taxes authorized to be levied and collected by this Section.

**Partial Invalidity**

Sec. 6. Invalidity of any Section, term or provision hereof shall not render invalid the remaining Sections, terms and provisions hereof which would otherwise be valid.

**Powers Additional and Supplemental**

Sec. 7. The provisions of this Act shall be deemed to provide additional and alternative methods of doing the things herein authorized and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing, or which may hereafter be conferred by law.

[Acts 1941, 47th Leg., p. 10, ch. 7; Acts 1961, 57th Leg., p. 1163, ch. 525, §§ 1 to 3; Acts 1965, 59th Leg., p. 1534, ch. 671, § 1, eff. Aug. 30, 1965.]

### Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

### Art. 6081g-1. Home-Rule Cities With Population in Excess of 40,000; Acquisition or Improvement of Lands and Buildings for Park and Related Purposes

Application of Act; Park Board of Trustees; Authority to Acquire or Improve Lands and Buildings

Sec. 1. The provisions of this Act are applicable to all home-rule cities having a population in excess of 40,000 according to the last preceding Federal census. The Park Board of Trustees of any such city, as hereinafter defined and provided, may acquire by gift, devise, or purchase, or improve or enlarge lands or buildings to be used for public parks, playgrounds, or historical museums, or lands upon which are located historic buildings, sites, or landmarks of Statewide historical significance associated with historic events or personalities, or prehistoric ruins, burial grounds, archaeological, paleontological, or vertebrate paleontological sites, or sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological or historical buildings, markers, monuments, or other historical features, such lands to be situated in any locality in this State and in tracts of any size which are deemed suitable by such Park Board, situated within the State either within or without the boundary limits of such city, but within the limits of the county wherein such city lies.

Park Board of Trustees; Creation by Ordinance

Sec. 2. Any such city, for the purpose of acquiring, improving, equipping, maintaining, financing or operating any such public park or park facilities for such city, may by ordinance adopted by the governing body thereof create a board to be designated "Park Board of Trustees", hereinafter sometimes called the "Board." Any such Board shall have the powers authorized in and shall perform the duties specified in this Act.

Membership

Sec. 3. The Park Board of Trustees shall be composed of nine members appointed by the governing body of such city, one of whom shall be a member of such governing body. Such trustees shall serve for a term of two years from the date of their appointment and any vacancies shall be filled by appointment of the governing body of such city; provided that five trustees first appointed shall serve for initial terms of two years and four trustees first appointed shall serve for initial terms of one

year, such initial terms to be designated by the governing body of such city. Each trustee shall serve without compensation but shall be reimbursed for all necessary expenses, including traveling, incurred in the performance of his official duties.

Oath and Bond

Sec. 4. Each trustee so appointed shall within fifteen days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the city clerk or city secretary of such city, payable to the order of such city and approved by the governing body thereof. Such bond shall be in such sum not exceeding \$5,000 as may be prescribed by the governing body. Such bond shall be conditioned upon the faithful performance of the duties of such trustee, including the proper handling of all moneys that may come into his hands in his capacity as a member of the Beach Park Board of Trustees, the cost of said bond to be paid by the Board.

Chairman; Officers; Meetings; Moneys

Sec. 5. At the time of the appointment of the first trustees, the governing body of the city shall designate one of the trustees as chairman of the Board, who shall serve in that capacity for a period of one year and annually thereafter the Board shall elect a chairman from among its members. The Board shall also elect annually from among its own members a vice-chairman, a secretary and a treasurer and the office of secretary and treasurer may be held by the same person. The Board shall hold regular meetings at times to be fixed by the Board and may hold special meetings at such other times as business or necessity may require, which special meetings may be called by the chairman or any three members of the Board. The money belonging to or under control of the Board shall be deposited and shall be secured substantially in the same manner prescribed by law for city funds.

Records; Inspection; Contracts; Annual Audit

Sec. 6. The Board shall keep a true and full record of all of its meetings and proceedings and preserve its minutes, contracts, accounts and all other records in a fireproof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the governing body of such city at all reasonable times. The Board may contract with the governing body of such city to have the city keep and maintain its records. An annual audit by independent auditors selected by the Board shall be made of all financial transactions and records of the Board.

Acquisition and Sale of Land or Interest Therein

Sec. 6(a): Any land or interest therein acquired by lease or otherwise and used in connection with a park under the provisions of this Act may be so acquired in the name of the Board of the city, but in no event may such land or interest be sold without (i) compliance with the provisions of the home rule charter of

the city by the title holder, or by compliance with the procedure prescribed for public auction by Chapter 772, Acts of the 60th Legislature, Regular Session, 1967,<sup>1</sup> and (ii) making contractual arrangements for the retirement of any indebtedness issued under the provisions of this Act. The limitation herein prescribed and the procedures to be followed shall be exclusive with reference to any real property acquired or used as hereinabove provided.

<sup>1</sup> Article 1577.

#### Powers and Authority

Sec. 7. In the ordinance establishing the original Board, the governing body of the city shall designate which particular parks and facilities then owned by the city shall be placed under the management and control of the Board and may designate additional parks and facilities by subsequent ordinances. In addition to the powers and authority herein granted, the Board shall have and exercise the following powers and authority:

(a) To manage, operate, maintain, equip and finance any and all existing public parks placed under its jurisdiction by the ordinance creating such Board and by subsequent ordinances;

(b) To improve, manage, operate, maintain, equip and finance additional parks acquired by gift, but not by the exercise of the power of eminent domain;

(c) To accept, receive and expend gifts of money or other things of value from any person, group of persons, corporation or association for the purpose of performing any function, power or authority herein invested in the Board;

(d) To advertise the city's recreational advantages for the purpose of attracting visitors, tourists, residents, and other users of the public facilities operated by the Board;

(e) To accept and receive from the city and to expend such funds as may be appropriated by the city from time to time for the purpose of improving, equipping, maintaining, operating and promoting recreational facilities under the Board's supervision and control;

(f) To enter into contracts, leases or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining or operating all facilities located or to be located on or pertaining to any park or parks under its control and to execute and perform its lawful powers and functions on lands leased from others;

(g) To have general power and authority to make and enter into all contracts, leases and agreements with persons, associations and corporations relating to the management, operation and maintenance of any concession, facility, improvement, leasehold, lands or other property of any

nature whatsoever over which such Board shall have jurisdiction and control; provided that the Board shall not enter into any such lease or agreement for the use of its properties by others for a longer term than forty (40) years;

(h) To adopt, promulgate and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the Board by the public or by lessees, concessionaires and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. In addition, the Board may also employ and compensate a manager for any park or parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the Board. For such legal services as it may require the Board may call upon the city attorney of such city and in lieu thereof or in addition thereto the Board may employ and compensate its own counsel and legal staff. The Board shall adopt a seal which shall be placed on all leases, deeds and other instruments which are usually executed under seal, and on such other instruments as may be required by the Board;

(j) To sue and be sued in its own name;

(k) To issue revenue bonds in the name of the Board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the Board, for the purpose of acquiring, improving or enlarging lands, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes. Such bonds may be issued in one or more installments or series by resolutions adopted by the Board without the necessity of an election, shall bear interest at a rate not to exceed the maximum now or hereafter permitted by law, shall mature serially or otherwise within forty (40) years from their date or dates, shall be sold by the Board on the best terms obtainable but for not less than par and accrued interest, shall be executed by the chairman and secretary of the Board in the manner provided for the execution of bonds issued by incorporated cities, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, which approval by the At-

torney General of Texas shall render such bonds incontestable except for fraud, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the Board shall specify in the resolution or resolutions authorizing the issuance of such bonds; provided that, except as herein otherwise provided, the provisions of Articles 1111 through 1118, Vernon's Texas Civil Statutes, together with all additions and amendments thereof as found in Chapter 10, Title 28, Vernon's Texas Civil Statutes, shall apply to the issuance of revenue bonds hereunder. All bonds issued under the provisions of this Act shall be, and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> and all such bonds shall be, and are hereby declared to be, legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto.

(l) The Board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the city for park purposes after the same have been authorized at an election held in the manner required by law;

(m) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the Board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for original bonds.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### Cumulative Effect

Sec. 8. This Act shall be cumulative of all other laws and of all Home-Rule Charter provisions, but this Act shall take precedence in the event of conflict.

#### Partial Invalidity

Sec. 9. In case any one or more of the Sections or provisions of this Act, or the application of such Sections or provisions to any situation, circumstance or person, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other Sections or provisions of this Act or the application of such Sections or provisions to any other situation, circumstances or persons, and it is intended that this Act shall be construed and applied as if such Sections or provisions had not been included herein for any constitutional application.

[Acts 1962, 57th Leg., 3rd C.S., p. 94, ch. 33, §§ 1 to 9; Acts 1969, 61st Leg., 2nd C.S., p. 194, ch. 36, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 102, ch. 54, § 1, eff. April 12, 1971; Acts 1973, 63rd Leg., p. 1301, ch. 491, §§ 1, 2, eff. June 14, 1973.

Sections 2 to 4 of the amendatory act of 1971 provided:

"Sec. 2. This Act and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein, and the powers granted under this Act shall be in addition to and not in derogation of any and all existing powers of any such city or of any such Parks Board; and this Act shall not be deemed to repeal, expressly or by implication, any power or right granted to any such city; and any such city having powers under existing law similar to or in the nature of those granted hereunder may continue to operate and act in the exercise of such powers or may operate and act under the powers granted herein or both. This Act shall, however, constitute full authority for any such Board to authorize and issue bonds in accordance with the provisions hereof, and for any such Board to exercise any power granted herein without reference to the provisions of any other general or special law or charter; and no other general or special law or charter provision which in any way limits or restricts or imposes additional requirements upon the carrying out of any of the matters herein authorized to be done shall ever be construed as applying to any action or proceeding taken hereunder or done pursuant hereto except as expressly provided to the contrary in this Act.

"Sec. 3. The creation of all Park Boards of Trustees or beach Park Boards of Trustees heretofore created under the provisions of Chapter 33, Acts of the 57th Legislature of Texas, 3rd Called Session, 1962, or under the provisions thereof as amended, pursuant to a favorable majority vote of the qualified voters of any such city, voting at an election held on such proposition, and all acts and proceedings of such boards, are ratified, approved, confirmed and validated in all respects as of the respective dates thereof; provided that notwithstanding the foregoing provisions of this section, nothing herein shall validate any matter now involved in litigation questioning the validity thereof if the question is ultimately determined against the validity thereof.

"Sec. 4. If any section, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional."

#### Art. 6081g-2. Validation of Acts and Proceedings of Cities of 60,000 Bordering on Gulf of Mexico for Park Purposes in Tidelands and Waters

This Act shall apply to any city in the State of Texas bordering upon the Gulf of Mexico which has a population of sixty thousand (60,000) or more inhabitants. All acts and proceedings heretofore taken or had by any such

city, or the governing body thereof, under the provisions of Chapter 7, Acts of the 47th Legislature of Texas, Regular Session, 1941, as said Chapter 7 was originally enacted, or as said Chapter 7 was amended by Chapter 525, Acts of the 57th Legislature of Texas, Regular Session, 1961,<sup>1</sup> are hereby in all things validated. Without in any way limiting the generality of the foregoing, it is expressly provided that all bond proceedings, contracts, leases, and agreements heretofore authorized, or entered into, by any such city, or its governing body, under the provisions of said Chapter 7 (as originally enacted or as amended), are hereby in all things validated.

[Acts 1963, 58th Leg., p. 1175, ch. 460, § 1, eff. Aug. 23, 1963.]

<sup>1</sup> Article 6081g.

**Art. 6081h. City Warrants for Park Improvements, Including Swimming Pools, and Tax Levies Validated; Refunding Bonds**

Sec. 1. All time warrants heretofore issued or authorized by any city for the purpose of evidencing the indebtedness of such city for the contract price for the construction of improvements to the public park in the city, including the construction of a swimming pool, including all tax levies, proceedings and the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed, notwithstanding the lack of statutory power of such city or the governing body thereof to levy a sum in excess of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars valuation of taxable property in such city in payment thereof. The governing body of such city is hereby authorized to refund said time warrants into negotiable bonds under the provisions of Chapter 163, Acts of the Regular Session of the 42nd Legislature, 1931,<sup>1</sup> and to levy a sufficient tax in excess of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars valuation of taxable property in such city, if necessary, in payment thereof, and such bonds when approved by the Attorney General of the State of Texas shall be binding, legal, valid, and enforceable obligations of such cities.

Sec. 2. Provided, however, that the provisions of this Act shall not be construed as validating any such tax levies, proceedings, warrants or bonds issued pursuant thereto, the validity of which has been contested or attacked in any suit or litigation pending at the time this Act becomes effective.

[Acts 1947, 50th Leg., p. 225, ch. 129.]

<sup>1</sup> Article 2368a.

**Art. 6081i. Bonds for Parks and Recreational Facilities Validated**

Sec. 1. All bonds heretofore voted and authorized by any city for the purpose of purchasing a park and recreational facilities and the construction and improvement of parking area and the streets adjacent thereto, either or both, including all proceedings and the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed not-

withstanding any lack of statutory power of such city or the governing body thereof to authorize and issue such bonds and notwithstanding that the election may not in all respects have been ordered and held in accordance with statutory provisions; and such bonds when approved by the Attorney General of the State of Texas, registered by the Comptroller of Public Accounts of the State of Texas, and sold and delivered for not less than par and accrued interest, shall be binding, legal, valid, and enforceable obligations of such cities. Provided, however, that this Act shall apply only to such bonds which were authorized at an election or elections wherein a majority of the qualified property taxpaying voters of the city whose property had been duly rendered for taxation voted in favor of the issuance thereof.

Sec. 2. This Act shall not be construed as validating any such proceedings or bonds issued or to be issued, the validity of which has been contested or attacked in any suit or litigation pending at the time that this Act becomes effective.

[Acts 1951, 52nd Leg., p. 47, ch. 30.]

**Art. 6081j. Cities and Counties Over 550,000; Construction of Park and Fairground Facilities**

**Application of Act**

Sec. 1. This Act applies to any city having a population larger than 550,000, according to the last preceding Federal Census; to any county having a population larger than 550,000, according to the last preceding Federal Census; and to such a city and such a county acting together; hereinafter called "eligible city or county."

**Authorization; Use for Parks, Fairgrounds, Exhibits, Concessions and Entertainment**

Sec. 2. An eligible city or county is authorized to construct buildings, improvements, and structures to be used in its park or fairgrounds for exhibits, concessions, and entertainment, and to acquire additional land therefor, if needed, and may acquire, repair, improve, and enlarge buildings and structures to be used for such purposes. Such improvements, buildings, and structures owned and to be owned by an eligible city or county are herein called "park facilities."

**Lease or Contract for Operation of Facilities**

Sec. 3. An eligible city or county is authorized to make a lease of, or a contract for, the operation of any or all of the park facilities with such terms and for such length of time as may be prescribed by the governing body of the city or county.

**Bond Issue**

Sec. 4. To obtain funds for purposes named in Section 2 of this Act, the governing body of an eligible city or county may, without the prerequisite of an election, issue negotiable revenue bonds payable from and secured by a pledge of the net revenues from any one or

more park facilities or from contracts leasing or providing for the operation of its park facilities. Bonds so secured may also be issued to refund bonds issued under this Act. Bonds issued under this Act shall state on their faces substantially the following: "The holder hereof shall never have the right to demand payment of this bond out of money raised or to be raised by taxation." While bonds issued under this Act are outstanding, it shall be the duty of the governing body of the city or county to enforce its leases and contracts, and to charge adequate fees, charges, and rentals to assure payment of the principal of and interest on the bonds as they become due, and to establish and maintain the funds as provided in the ordinance authorizing their issuance.

**Maturity; Interest; Approval and Registration**

Sec. 5. Such bonds shall mature in not to exceed 40 years, bear interest at a rate not to exceed six per cent per annum, and shall be executed, approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts as provided by law for city bonds. When such bonds are approved by the Attorney General, they shall be incontestable.

**Bonds as Legal and Authorized Investments**

Sec. 6. Bonds issued under this Act shall be, and are hereby declared to be, legal and authorized investments for banks, savings banks, trust companies, building and loan associations, and all insurance companies. Such bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of cities, counties, school districts, or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1963, 58th Leg., p. 917, ch. 349; Acts 1965, 59th Leg., p. 1653, ch. 713, § 1, eff. Aug. 30, 1965.]

**7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES**

**Art. 6081r. Development of Outdoor Recreation Resources**

**Parks and Wildlife Department as State Agency; Cooperation With Federal Government; Acquisition of Land**

Sec. 1. The Parks and Wildlife Department of the State of Texas is hereby designated as the State Agency to cooperate with the Federal Government in the administration of the provisions of any federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including the acquisition of lands and waters and interests therein, and specifically to cooperate with the Federal Government in the administration of the provisions of the "Land and Water Conservation Fund Act

of 1965" (Public Law 88-578)<sup>1</sup> effective January 1, 1965, and any amendments which may be added thereto from time to time, in the event no other State Agency is by law designated to cooperate with the Federal Government in the administration of the provisions of such Act or other Acts which may be hereafter enacted by the Congress.

The Parks and Wildlife Department is directed to enact and promulgate such rules and regulations as may be necessary to effect the cooperation as herein outlined and designated. The Parks and Wildlife Department is hereby authorized and directed to cooperate with the proper departments of the Federal Government and with all other departments of the state and local governments including as a part of a state plan water districts, river authorities, and special districts in outdoor recreation in the enforcement and administration of the provisions of the Federal Acts and any Amendments thereto and in compliance with the rules and regulations issued thereunder in the manner prescribed in this Act or as otherwise provided by law. It is the intent of the Legislature to add to the purposes, functions and duties of river authorities and water districts or other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Constitution of Texas, and counties, to acquire lands for public recreation purposes, to construct thereon facilities for public use, to provide for the operation, maintenance and supervision of such public recreation areas, and to enter into agreements with other local, state or Federal Agencies for planning, construction, maintenance, and operation of such facilities, together with necessary access roads thereto, and to maintain adequate sanitary standards on the land and water areas as a part of and adjacent to such recreation areas.

The Parks and Wildlife Department, in order to accomplish the acquisition of lands under the programs outlined in this Act, may institute condemnation proceedings as are now provided in the Statutes of the State of Texas; however, if, in the exercise of its power of eminent domain or police power, or any other power, it requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, properties or facilities or pipelines, all such relocation, raising, lowering, rerouting, or changes in grade or alteration of construction shall be accomplished at the sole expense of the Parks and Wildlife Department of the State of Texas. The term "sole expense" shall mean the actual cost of such lowering, rerouting or change in grade or alteration of construction in providing comparable replacement without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

<sup>1</sup> 16 U.S.C.A. §§ 4607-4 to 4607-11.

## State-Wide Comprehension Plan

Sec. 2. The Parks and Wildlife Department is authorized and empowered to prepare, maintain, and keep up-to-date a state-wide comprehensive plan for the development of the outdoor recreation resources of the State of Texas; to develop, operate, and maintain outdoor areas and facilities of the state and to acquire land, waters, and interests in land and waters for such areas and facilities.

## Participation in Federal Program; Contracts; Records

Sec. 3. The Parks and Wildlife Department is authorized to apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any Federal program as now provided by law or as may hereafter be provided respecting outdoor recreation. The Parks and Wildlife Department is authorized to enter into contracts and agreements with the United States or any appropriate agency thereof for the purpose of planning, for acquisition of, and development of outdoor recreation resources of the state in conformity with the provisions of the "Land and Water Conservation Fund Act of 1965" and any Amendments thereto, and in conformity with any other Federal Act the purpose of which is the development of outdoor recreation resources of the state. The Department shall keep financial and other records relating to such programs and shall furnish to appropriate officials and agencies of the United States and of the State Government such reports and information as may be reasonably necessary to enable such officials and agencies to carry out their responsibilities for the administration of such programs.

In order to obtain the benefits of any such programs, the Parks and Wildlife Department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the State of Texas including as a part of a state plan cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

## State Funds; Agreements on Behalf of Political Subdivisions

Sec. 4. The Parks and Wildlife Department shall make no commitment or enter into any agreement pursuant to the authority under this Act until it has determined that sufficient funds are available to it for meeting the state's share, if any, of the cost of the project. It is the legislative intent that to such extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by the State of Texas under authority of this Act such areas and facilities shall be publicly maintained for outdoor recreation purposes.

The Parks and Wildlife Department may enter into and administer agreements with the United States or any appropriate agency thereof for plans, acquisition, operation, and development of projects involving participating Federal aid funds on behalf of any political subdivision or subdivisions of the State of Texas as set out in this Act provided that such political subdivision or subdivisions shall provide certification and give necessary assurance to the Department that they have available sufficient funds to meet their share, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of such subdivision or subdivisions as set out in this Act for public outdoor recreation use.

## Expenditure of Federal Moneys; Receipt and Deposit of Funds

Sec. 5. The Parks and Wildlife Department is authorized to accept and expend any Federal moneys allocated to the State of Texas for any projects or programs established for the purpose of carrying out the provisions of this Act and for administrative expenses and/or any other expenses incident to the administration of said projects or programs.

The Parks and Wildlife Department is authorized to receive and expend funds from the state, counties, and cities, and from any other source for the purpose of carrying out the provisions of this Act.

The Department shall deposit all such funds irrespective of source in the Special Fund hereinafter created in the State Treasury, and such funds shall be subject to withdrawal by the Parks and Wildlife Department and all such funds deposited in said Special Fund in the Treasury are hereby appropriated to the Parks and Wildlife Department.

## State Land and Water Conservation Fund

Sec. 6. There shall be created in the State Treasury a Special Fund known as the "State Land and Water Conservation Fund," and all funds received from the Federal Government and/or from any other source for the purpose of paying the cost of planning, acquisition, operation, and development of outdoor recreation resources of the state and the administrative expenses incident to the projects or programs coming within the scope of this Act shall be deposited in said Special Fund in the Treasury subject to withdrawals by the Parks and Wildlife Department.

## Rules and Regulations

Sec. 7. The Parks and Wildlife Department is hereby authorized to promulgate rules and regulations governing the priority to be given projects submitted under the plan in pursuance to the provisions of this Act and within the limitations of the appropriation made for such purposes.

Personnel; Costs of Administration and Operation  
of Programs

Sec. 8. The Parks and Wildlife Department shall have the authority to employ such personnel as may be found necessary by the Executive Director and/or to make such arrangements as are necessary to efficiently carry out the purposes of this Act.

At such time as appropriations are made available for such purposes, the Parks and Wildlife Department is authorized to use such funds for the administrative costs and the operation of the programs established under and in pursuance to this Act or as it may hereafter be amended, including but not limited to the payment of salaries, travel expense, rent, bond premiums, postage, telephone and telegraph, freight, express, drayage, stationery, printed forms, office supplies, equipment, repairs, maintenance and miscellaneous and contingent expense.

[Acts 1965, 59th Leg., p. 269, ch. 112, eff. Aug. 30, 1965.]

**Art. 6081s. Historical Structures and Sites;  
Acquisition**

Authority of Parks and Wildlife Department

Sec. 1. (a) The Parks and Wildlife Department may acquire by purchase, by gift or otherwise

(1) a structure or site at which events occurred that have made an outstanding contribution to, and are identified prominently with, or which best represent, some important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) a structure or site significantly associated with the lives of outstanding historic persons, or with an important event that well represents some great idea or ideal;

(3) a structure embodying the distinguishing characteristics of an architectural type, which structure is inherently valuable for study of a period, style, or method of construction;

(4) a structure or site that contributes significantly to the understanding of aboriginal man in the nation or state; and

(5) a structure or site of significant geologic interest which relates to prehistoric animal or plant life.

(b) The Parks and Wildlife Department shall restore and maintain each structure or site acquired under Subsection (a) of this section for the benefit of the general public. The department may enter into one or more interagency contracts for the purpose of restoring or maintaining a structure or site.

(c) The department shall use the money provided in the General Appropriations Act for this purpose to pay for the restoration and

maintenance of each structure or site acquired under Subsection (a) of this section. The department shall also prescribe and collect a nominal fee for admission to every structure and site and shall use all admission fees collected to pay for the restoration and maintenance of structures and sites.

Participation in Federal Program; Contracts; Records  
and Reports

Sec. 2. The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program as are now or in the future may be provided by law respecting the planning, acquisition, and development of historical sites and structures. The department may enter into contracts and agreements with the United States or its agencies for the purpose of planning, acquiring, and developing historic sites and structures in this state in conformity with any federal act the purpose of which is the development of historical sites and structures. The department shall keep financial and other records relating to such programs and shall furnish to appropriate officials and agencies of the United States and of this state all reports and information reasonably necessary to enable them to carry out their responsibilities in the administration of the programs.

[Acts 1967, 60th Leg., p. 57, ch. 27, eff. Aug. 28, 1967.]

**Art. 6081s-1. Outstanding Natural Features  
or Formations; Designation With Markers  
or Monuments; Acquisition of Sites;  
Rules; Interagency Cooperation**

Sec. 1. The Texas Parks and Wildlife Commission is authorized to locate and designate outstanding natural features and formations located in this State. It may erect or contract to have erected at such designated sites, suitable markers or monuments to call the attention of the public to such outstanding natural features.

Sec. 2. The Commission may accept title to a suitable site for such marker or monument from private individuals, associations or corporations by gift. Sites may likewise be acquired by purchase, provided funds are appropriated for such purpose.

Sec. 3. The Commission may promulgate and adopt reasonable rules or policies for accepting or purchasing such sites, for determining the suitability of sites and for establishing the priority of accepting and marking such sites.

Sec. 4. All other State agencies are directed to cooperate with the Parks and Wildlife Department to aid in the location of suitable sites. The Department may accept jurisdiction to suitable sites located on State lands by an interagency transfer of jurisdiction.

[Acts 1971, 62nd Leg., p. 1388, ch. 373, eff. May 26, 1971.]

**Art. 6081t. Joint Establishment and Operation of Recreational Facilities**

Sec. 1. In this Act, "governmental unit" means a city, town, independent school district, or any other political subdivision.

Sec. 2. Any governmental unit may by agreement establish, provide, maintain, construct, and operate jointly with another gov-

ernmental unit located in the same or adjacent counties, playgrounds, recreation centers, athletic fields, swimming pools, and other park and recreational facilities located on property now owned or subsequently acquired by either of the governmental units.

[Acts 1967, 60th Leg., p. 1023, ch. 450, eff. Aug. 28, 1967.]

# TITLE 104

## PARTITION

### 1. PARTITION OF REAL ESTATE

#### Article

6082. Joint Owner May Compel.  
6083. Petition.  
6084. Repealed.  
6085. Where Defendant is Unknown.  
6086 to 6097. Repealed.  
6098. Partition Not Prejudicial.  
6099. Each Party Shall Hold in Severalty.  
6100. Decree Shall Vest Title.

### 2. PARTITION OF PERSONAL PROPERTY

6101. Part Owners May Compel Partition.  
6102. Suit Begun in What Court.  
6103 to 6105. Repealed.

### 3. MISCELLANEOUS PROVISIONS

- 6106, 6107. Repealed.  
6108. Pay of Commissioners.  
6109. Repealed.

### 1. PARTITION OF REAL ESTATE

#### Art. 6082. Joint Owner May Compel

Any joint owner or claimant of any real estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in this chapter.

[Acts 1925, S.B. 84.]

#### Art. 6083. Petition

Such joint owner or claimant may file his petition in the district court of the county in which the real estate, or any part thereof, sought to be partitioned, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.
2. The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.
3. The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

[Acts 1925, S.B. 84.]

#### Repeal in Part

*Repealed in part, see Rules of Civil Procedure, rule 756, and art. 1731a.*

Art. 6084. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 6085. Where Defendant is Unknown

If the plaintiff, his agent, or attorney, at the commencement of any suit, or during the prog-

ress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding such officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for four (4) successive weeks previous to the return day of such process. When such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 532, § 1.]

#### Repeal

*This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act [art. 1731a] which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941.*

Art. 6086 to 6097. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 6098. Partition Not Prejudicial

When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates.

[Acts 1925, S.B. 84.]

Art. 6099. Each Party Shall Hold in Severalty

When any partition is made, each party to whom a share has been allotted shall hold the

same in severalty under the same conditions and covenants that it was held before such partition was made. No warranty, lease or right whatsoever shall be impaired or affected by such partition.

[Acts 1925, S.B. 84.]

**Art. 6100. Decree Shall Vest Title**

The decree of the court confirming the report of the commissioners in partition, when a partition has been made shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them.

[Acts 1925, S.B. 84.]

**2. PARTITION OF PERSONAL PROPERTY**

**Art. 6101. Part Owners May Compel Partition**

Part owners of personal property may be compelled to make partition between them in the manner hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 6102. Suit Begun in What Court**

Suit for partition shall be commenced in the court having jurisdiction of the value of such

property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases.

[Acts 1925, S.B. 84.]

**Repeal in Part**

*Repealed in part, see Rules of Civil Procedure, rule 772, and art. 1731a.*

**Arts. 6103 to 6105. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**3. MISCELLANEOUS PROVISIONS**

**Arts. 6106, 6107. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 6108. Pay of Commissioners**

The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, to be taxed and collected as other costs in the case.

[Acts 1925, S.B. 84.]

**Art. 6109. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

# TITLE 105

## PARTNERSHIPS AND JOINT STOCK COMPANIES

Chapter	Article
1. Partnerships .....	6110
2. Unincorporated Joint Stock Companies .....	6133
3. Real Estate Investment Trusts .....	6138A

### CHAPTER ONE. PARTNERSHIPS

#### LIMITED PARTNERSHIPS

Article
6110 to 6132. Repealed.
6132a. Uniform Limited Partnership Act.

#### PARTNERSHIPS

6132b. Texas Uniform Partnership Act.
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#### LIMITED PARTNERSHIPS

Arts. 6110 to 6132. Repealed by Acts 1955, 54th Leg., p. 471, ch. 133, § 31

#### Art. 6132a. Uniform Limited Partnership Act Short Title

Sec. 1. This Act shall be known and may be cited as The Texas Uniform Limited Partnership Act.

##### Limited Partnership Defined

Sec. 2. Limited partners not bound. A limited partnership is a partnership formed by two (2) or more persons under the provisions of Section 3 of this Act, and having as members one (1) or more general partners and one (1) or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

##### Formation of Limited Partnership

Sec. 3. (a) Two (2) or more persons desiring to form a limited partnership shall:

(1) Sign and swear to a certificate, which shall state:

- (A) The name of the partnership.
- (B) The character of the business.
- (C) The location of the principal place of business.

(D) The name and place of residence of each member; general and limited partners being respectively designated.

(E) The term for which the partnership is to exist.

(F) The amount of cash and a description of the agreed value of the other property contributed by each limited partner.

(G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or

events on the happening of which they shall be made.

(H) The time, if agreed upon, when the contribution of each limited partner is to be returned.

(I) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

(J) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

(K) The right, if given, of the partners to admit additional limited partners.

(L) The right, if given, of one or more of the limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

(M) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner.

(N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the office of the Secretary of State accompanied by the payment of a filing fee in the amount of one-half of one percent ( $\frac{1}{2}$  of 1%) of the total contributions required to be stated in Section 3(a)(1)(F) and Section 3(a)(1)(G) of this Act; provided, however, that the fees to be paid to the Secretary of State under this section shall never be less than One Hundred Dollars (\$100) or more than Twenty-five Hundred Dollars (\$2,500).

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (a).

##### Business Which May be Carried On

Sec. 4. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking and insurance.

##### Contributions of Limited Partner

Sec. 5. The contributions of a limited partner may be cash or other property, but not services.

Partnership Name

Sec. 6. (a) The surname of a limited partner shall not appear in the partnership name, unless:

(1)<sup>1</sup> It is also the surname of a general partner.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (a) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

<sup>1</sup> There is no (2).

False Statements in Certificate

Sec. 7. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in Section 26(c).

Liability of Limited Partner

Sec. 8. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

Admission of Additional Limited Partners

Sec. 9. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of Section 26.

General Partners—Rights, Powers, Restrictions and Liabilities

Sec. 10. (a) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(1) Do any act in contravention of the certificate.

(2) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(3) Confess a judgment against the partnership.

(4) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(5) Admit a person as a general partner.

(6) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(7) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

Rights of Limited Partner

Sec. 11. (a) A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(3) Have dissolution and winding up by decree of court.

(b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in Sections 16 and 17.

Person Erroneously Believing Himself a Limited Partner

Sec. 12. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the right of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

Same Person as General Partner and Limited Partner

Sec. 13. (a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

Limited Partner as Creditor of Partnership

Sec. 14. (a) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro-rata share of the assets. No limited partner shall in respect to any such claim:

(1) Receive or hold as collateral security any partnership property, or

(2) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (a) is a fraud on the creditors of the partnership.

#### Priority as Between Several Limited Partners

Sec. 15. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

#### Share of Profits or Compensation

Sec. 16. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

#### Return of Contribution

Sec. 17. (a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (b), and

(3) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(b) Subject to the provisions of paragraph (a), a limited partner may rightfully demand the return of his contribution:

(1) On the dissolution of a partnership, or

(2) When the date specified in the certificate for its return has arrived, or

(3) After he has given six (6) months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when:

(1) He rightfully but unsuccessfully demands the return of his contribution, or

(2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (a)(1) and the limited partner would otherwise be entitled to the return of his contribution.

#### Liabilities of Limited Partner to Partnership

Sec. 18. (a) A limited partner is liable to the partnership:

(1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

#### Interest as Personal Property

Sec. 19. A limited partner's interest in the partnership is personal property.

#### Assignments and Substitutions

Sec. 20. (a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(c) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Section 26.

(f) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under Sections 7 and 18.

#### Retirement, Death or Insanity of General Partner

Sec. 21. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners.

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

#### Death of Limited Partner

Sec. 22. (a) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

#### Creditors of Limited Partners, Remedies of

Sec. 23. (a) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by paragraph (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this Act shall be held to deprive a limited partner of his statutory exemption.

#### Order of Payment of Liabilities on Dissolution

Sec. 24. (a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(3) Those to limited partners in respect to the capital of their contributions.

(4) Those to general partners other than for capital and profits.

(5) Those to general partners in respect to profits.

(6) Those to general partners in respect to capital.

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claim for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

#### Cancellation or Amendment of Certificate

Sec. 25. (a) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(b) A certificate shall be amended when:

(1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

(2) A person is substituted as a limited partner.

(3) An additional limited partner is admitted.

(4) A person is admitted as a general partner.

(5) A general partner retires, dies or becomes insane, and the business is continued under Section 21.

(6) There is a change in the character of the business of the partnership.

(7) There is a false or erroneous statement in the certificate.

(8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

(9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(10) The members desire to make a change in any other statement in the cer-

tificate in order that it shall accurately represent the agreement between them.

**Instruments and Proceeding to Cancel or Amend  
Certificates; Fees**

Sec. 26. (a) The writing to amend a certificate shall:

(1) Conform to the requirements of Section 3(a)(1) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (a) and (b) as a person who must execute the writing refuses to do so, may petition the district court of the judicial district wherein he resides, to direct a cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the Secretary of State to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or cancelled when there is filed for record in the office of the Secretary of State where the certificate is recorded:

(1) A writing in accordance with the provisions of paragraph (a) or (b) or

(2) A certified copy of the order of court in accordance with the provisions of paragraph (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Act.

(g) The Secretary of State shall collect the following fees for filing amendments and cancellations of certificates:

(1) For an amendment which does not provide for new, increased or additional contributions, One Hundred Dollars (\$100);

(2) For an amendment which provides for new, increased or additional contributions, one-half of one percent ( $\frac{1}{2}$  of 1%) of the new, increased or additional contribution; provided, however, that the fees to

be paid to the Secretary of State under this section shall never be less than One Hundred Dollars (\$100) or more than Twenty-five Hundred Dollars (\$2,500);

(3) For a cancellation, Twenty-five Dollars (\$25).

**Parties to Proceedings Against Partnership**

Sec. 27. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

**Interpretation and Construction**

Sec. 28. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(b) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(c) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action on proceedings begun or right accrued before this Act takes effect.

**Cases Not Provided For**

Sec. 29. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

**Partnerships Formed Under Prior Laws**

Sec. 30. (a) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of Section 3; provided the certificate sets forth:

(1) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(2) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(b) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of Articles 6110-6132, both inclusive, Revised Civil Statutes of Texas, except that such partnership shall not be renewed unless so provided in the original agreement.

**Acts Repealed**

Sec. 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, Articles 6110 to 6132, both inclusive, Revised Civil Statutes of Texas are hereby repealed.

[Acts 1955, 54th Leg., p. 471, ch. 133; Acts 1971, 62nd Leg., p. 1729, ch. 501, §§ 1, 2, eff. May 28, 1971.]

PARTNERSHIPS

Art. 6132b. Texas Uniform Partnership Act

PART I. PRELIMINARY PROVISIONS

Name of Act

Sec. 1. This Act shall be known and may be cited as the Texas Uniform Partnership Act.

Definition of Terms

Sec. 2. In this Act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any State Insolvent Act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

Interpretation of Knowledge and Notice

Sec. 3. (1) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Rules of Construction

Sec. 4. (1) The rule that Statutes in derogation of the Common Law are to be strictly construed shall have no application to this Act.

(2) The law of estoppel shall apply under this Act.

(3) The law of agency shall apply under this Act.

(4) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This Act shall not be construed so as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

Rules for Cases Not Provided for in This Act

Sec. 5. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

PART II. NATURE OF A PARTNERSHIP

Partnership Defined

Sec. 6. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other Statute of this state, or any Statute adopted by authority, other than the authority of this state, is not a partnership under this Act, unless such association would have been a partnership in this state prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the Statutes relating to such partnerships are inconsistent herewith.

(3) An association is not a partnership under this Act if:

(a) The word "association" or "associates" is part of and always used in the name under which it transacts business, and

(b) Its assumed name certificates, filed in accordance with law, contain a statement substantially as follows: "This association intends not to be governed by the Texas Uniform Partnership Act," and

(c) The business it transacts is wholly or partly engaging in an activity in which corporations cannot lawfully engage.

This Subsection shall not be construed to change in any way the law applicable to associations which are not partnerships under this Act.

Rules for Determining the Existence of a Partnership

Sec. 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good-will of a business or other property by installments or otherwise.

(5) Operation of a mineral property under a joint operating agreement does not of itself establish a partnership.

#### Partnership Property

Sec. 8. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

### PART III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

#### Partner Agent of Partnership as to Partnership Business

Sec. 9. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good-will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

#### Conveyance of Real Property of the Partnership

Sec. 10. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of Section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of Section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

(6) Nothing in this Section shall be deemed to modify the Statutes of limitations of actions for lands.

#### Partnership Bound by Admission of Partner

Sec. 11. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as defined by this Act is evidence against the partnership.

#### Partnership Charged with Knowledge of or Notice to Partner

Sec. 12. Notice to any partner of any matter relating to partnership affairs, and the

knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**Partnership Bound by Partner's Wrongful Act**

Sec. 13. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is cause to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

**Partnership Bound by Partner's Breach of Trust**

Sec. 14. The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

**Nature of Partner's Liability**

Sec. 15. All partners are liable jointly and severally for all debts and obligations of the partnership including those under Sections 13 and 14.

**Partner by Estoppel**

Sec. 16. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership;

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately,

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

(3) A representation that a person is an "associate" or a "non-partner member" of a partnership is not a representation that he is a partner in the partnership.

**Liability of Incoming Partner**

Sec. 17. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

**PART IV. RELATIONS OF PARTNERS TO ONE ANOTHER**

**Rules Determining Rights and Duties of Partners and Employees**

Sec. 18.

(1) The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

(2) By written agreement, the partners may establish various classes of partners (such as "senior partners," "junior partners," "managing partners" and others) and may provide for their varying rights and duties in relation to the partnership.

(3) By written agreement, the partners may establish various classes of non-partner employees (such as "associates," "non-partner members" and others) and may provide for their varying rights and duties in relation to the partnership.

#### Partnership Books

Sec. 19. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

#### Duty of Partners to Render Information

Sec. 20. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

#### Partner Accountable as a Fiduciary

Sec. 21. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This Section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

#### Right to an Account

Sec. 22. Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

(b) If the right exists under the terms of any agreement,

(c) As provided by Section 21,

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(d) Whenever other circumstances render it just and reasonable.

#### Continuation of Partnership Beyond Fixed Term

Sec. 23. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

### PART V. PROPERTY RIGHTS IN PARTNERSHIP

#### Extent of Property Rights of a Partner

Sec. 24. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. The community property rights of a partner's spouse are stated in Section 28-A.

#### Nature of a Partner's Right in Specific Partnership Property

Sec. 25. (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partner-

ship property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

Nature of Partner's Interest in the Partnership

Sec. 26. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property for all purposes.

Assignment of Partner's Interest

Sec. 27. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs; it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled and, for any proper purpose, to require reasonable information or account of partnership transactions and to make reasonable inspection of the partnership books.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest.

Interest in Partnership Subject to Charging Order

Sec. 28. (1) On due application to a competent court by any judgment creditor of a partner (or of any other owner of an interest in the partnership), the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner (or such other owner) with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner (or such other owner) might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this Act shall be held to deprive a partner (or other owner) of his right, if any, under the exemption laws, as regards his interest in the partnership.

Extent of Community Property Rights of a Partner's Spouse

Sec. 28-A. (1) A partner's rights in specific partnership property are not community property.

(2) A partner's interest in the partnership may be community property.

(3) A partner's right to participate in the management is not community property.

Effect of Death or Divorce on Interest in the Partnership

Sec. 28-B. (1)(A) On the divorce of a partner, the partner's spouse shall, to the extent of such spouse's interest in the partnership, be regarded for purposes of this Act as an assignee and purchaser of such interest from such partner.

(B) On the death of a partner, such partner's surviving spouse (if any) and such partner's heirs, legatees or personal representative, shall to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(C) On the death of a partner's spouse, such spouse's heirs, legatees or personal representative shall, to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(2) A partnership is not dissolved by the death of a partner's spouse unless the agreement between the partners provides otherwise.

(3) Nothing in this Act shall impair any agreement for the purchase or sale of an interest in a partnership at the death of the owner thereof or at any other time.

PART VI. DISSOLUTION AND WINDING UP

Dissolution Defined

Sec. 29. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Partnership Not Terminated by Dissolution

Sec. 30. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Causes of Dissolution

Sec. 31. Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this Section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner unless the agreement between the partners provides otherwise;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under Section 32.

#### Dissolution by Decree of Court

Sec. 32. (1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under Sections 27 and 28:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

#### General Effect of Dissolution on Authority of Partner

Sec. 33. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dis-

solution terminates all authority of any partner to act for the partnership:

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where Section 34 so requires.

(2) With respect to persons not partners, as declared in Section 35.

#### Right of Partner to Contribution from Co-partners After Dissolution

Sec. 34. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

#### Power of Partner to Bind Partnership to Third Persons After Dissolution

Sec. 35. (1) After dissolution a partner can bind the partnership except as provided in paragraph (3):

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under Paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit to the partnership prior to dissolution; and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in Paragraph (1bII).

(4) Nothing in this Section shall affect the liability under Section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

#### Effect of Dissolution on Partner's Existing Liability

Sec. 36. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

#### Right to Wind Up

Sec. 37. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

#### Rights of Partners to Application of Partnership Property

Sec. 38. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under Section 36(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(I) All the rights specified in paragraph (1) of this Section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this Section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2aII), of this Section,

(II) If the business is continued under paragraph (2b) of this Section the right as against his co-partners and all claiming through them in re-

spect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be indemnified against all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

**Rights Where Partnership is Dissolved for Fraud or Misrepresentation**

Sec. 39. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

**Rules for Distribution**

Sec. 40. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are:

(I) The partnership property,

(II) The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by Section 18(a) the amount necessary to satisfy the liabilities; but if any,

but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors,

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

**Liability of Persons Continuing the Business in Certain Cases**

Sec. 41. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners, and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and

(2) of this Section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this Section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this Section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this Section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

**Rights of Retiring or Estate of Deceased Partner  
When the Business is Continued**

Sec. 42. When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 41 (1, 2, 3, 5, 6) or Section 38(2b), without any settlement of

accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this Section as provided by Section 41(8) of this Act.

**Accrual of Actions**

Sec. 43. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

**PART VII. MISCELLANEOUS PROVISIONS**

**Severability; Effect of Partial Invalidity**

Sec. 44. If a court shall adjudge to be invalid or unconstitutional any provision of this Act, such judgment or decree shall not affect other provisions or applications of this Act, but the effect thereof shall be confined to the provision so adjudged to be invalid or unconstitutional. To this end, the provisions of this Act are severable.

**Effective Date**

Sec. 45. This Act shall take effect and be in force from and after January 1, 1962.

**Repealer**

Sec. 46. All Acts or parts of Acts inconsistent with this Act are hereby repealed. However nothing herein shall be deemed to repeal:

(A) Acts 1955, 54th Legislature, page 471, Chapter 133 (codified as Article 6132a, Revised Civil Statutes of Texas, 1925, the Texas Uniform Limited Partnership Act).

(B) Acts 1858, page 110; P.D. 1514; General Laws Volume 4, page 982 (codified as Article 2033, Revised Civil Statutes of Texas, 1925, and pertaining to citation upon one member of a partnership).

(C) Acts 1858, page 110, P.D. 1514; General Laws Volume 4, page 982 (codified as Article 2223, Revised Civil Statutes of Texas, 1925, and pertaining to judgment against partnership or partners).

(D) Any other provision pertaining to citation or judgment against partners or partnerships.

[Acts 1961, 57th Leg., p. 289, ch. 158.]

## CHAPTER TWO. UNINCORPORATED JOINT STOCK COMPANIES

### Article

6133. Suit in Company Name.  
6134. Service of Citation.  
6135. Judgment.  
6136. Joint Liability.  
6137. Individual Liability.  
6138. This Chapter Cumulative.

### Art. 6133. Suit in Company Name

Any unincorporated joint stock company or association, whether foreign or domestic, doing business in this State, may sue or be sued in any court of this State having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit.

[Acts 1925, S.B. 84.]

### Art. 6134. Service of Citation

In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies.

[Acts 1925, S.B. 84.]

### Art. 6135. Judgment

In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits.

[Acts 1925, S.B. 84.]

### Art. 6136. Joint Liability

Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it.

[Acts 1925, S.B. 84.]

### Art. 6137. Individual Liability

In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stock-

holders or members until execution against the joint property has been returned without satisfaction.

[Acts 1925, S.B. 84.]

### Art. 6138. This Chapter Cumulative

The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law.

[Acts 1925, S.B. 84.]

## CHAPTER THREE. REAL ESTATE INVESTMENT TRUSTS

### Art. 6138A. Real Estate Investment Trust Act

#### Short Title

Sec. 1. This Act shall be known and may be cited as the "Texas Real Estate Investment Trust Act."

#### Real Estate Investment Trust Defined

Sec. 2. A real estate investment trust is an unincorporated trust formed by one or more trust managers under the provisions of Section 3 of this Act and managed in accordance with the provisions of Section 4 of this Act.

#### Formation of Real Estate Investment Trust

Sec. 3. (A) One or more persons, may act as trust manager(s) of a real estate investment trust by subscribing and acknowledging to a declaration of trust before an officer duly authorized to take acknowledgments of deeds, which shall set forth:

(1) The name of the trust and a statement that an assumed name certificate setting forth such name has been filed in the manner prescribed by law.

(2) A statement that it is formed pursuant to the provisions of this Act and has the following as its purpose:

To purchase, hold, lease, manage, sell, exchange, develop, subdivide and improve real property and interests in real property, and in general, to carry on any other business and do any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Texas upon real estate investment trusts formed under the Texas Real Estate Investment Trust Act, and to do any or all of the things hereinafter set forth to the same extent as natural persons might or could do. The term "real property" and the term "interests in real property" for the purposes stated herein shall not include severed mineral, oil or gas royalty interests.

(3) As to any real property of any character, major capital improvements must be made within fifteen (15) years of purchase or the property must be sold. Such major capital improvements must equal or exceed the purchase price of such real property, if the same is unimproved property at the time of purchase or property outside the corporate limits of a city, town or village. Any citizen of the State of Texas may force compliance with this provision by filing suit in any district court of this state and shall receive from such real estate investment trust forced to sell under this provision the sum of five per cent (5%) of the sale price of such real property interest as compensation.

(4) The post office address of its initial principal office and place of business.

(5) The name and post office address of each trust manager, specifying the resident trust manager.

(6) The period of its duration, which may be for a term of years or perpetual.

(7) The aggregate number of shares of beneficial interests the trust shall have authority to issue, the par value to be received by the trust for the issuance of each of such shares and a statement that each share shall be equal in all respects to every other share.

(8) A statement that shares of beneficial interests will be issued only for money or property actually received.

(9) A statement that the trust manager(s) shall hold the money or property received for the issuance of shares for the benefit of the owners of such shares.

(10) A statement that the trust will not commence operations until the beneficial ownership is held by one hundred or more persons with no five (5) persons owning more than fifty per cent (50%) of the total number of outstanding shares of beneficial interest. The word person as used herein shall not include corporations.

(11) Any provision, not inconsistent with law, including any provision which under this Act is permitted to be set forth in the by-laws, which the trust manager(s) elect to set forth in the declaration of trust for the regulation of the internal affairs of the trust.

(B) The declaration of trust shall be filed for record with the County Clerk of the county of the principal place of business of the trust.

#### Operation of Real Estate Investment Trust

Sec. 4. (A) The control, operation, disposition, investment, reinvestment and management of the trust estate and whether included in the foregoing or not, all powers necessary or appropriate to effect any or all of the purposes for which the trust is organized shall be vested in the trust manager(s) named in the declaration of trust or successor(s) selected in accord-

ance therewith; provided that naming successor trust manager(s) shall be considered an amendment to the declaration of trust. At least a majority of the trust managers must be natural persons and residents of the State of Texas and the other trust manager(s), if any, need not be residents of this state or shareholders of the trust unless the declaration of trust or by-laws so require. The declaration of trust or by-laws may prescribe other qualifications for the trust manager(s).

(B) Any vacancy occurring in the trust manager(s) may be filled by a two-thirds vote of the outstanding shares of the trust.

(C) If the trust is managed by three (3) or more trust managers, a majority of the number of trust managers shall constitute a quorum for the transaction of business unless a greater number is required by the declaration of trust or the by-laws.

(D) The trust manager(s) may designate such of its members to constitute officers of the trust to the extent provided in the declaration of trust or in the by-laws of the trust, who shall have and may exercise all of the authorities of the trust manager(s) in the business and affairs of the trust except where action of the trust manager(s) is specified by this Act or other applicable laws, but the designation of such officers and the delegation thereto of authority shall not operate to relieve the trust manager(s), or any member thereof, of any responsibility imposed upon them or him by law. All officers and agents of the trust shall have such authority and perform such duties in the management of the trust as may be provided in the by-laws or as may be determined by the trust manager(s) not inconsistent with the by-laws. Any officer or agent elected or appointed by the trust manager(s) may be removed by the trust manager(s) whenever in their judgment the best interests of the trust will be served thereby, but such removal shall be without prejudice to the contract rights, if any, if the person is so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

(E) The trust manager(s) or officers shall have the power to exercise complete discretion with respect to the investment of the trust estate subject to the limitation that seventy-five per cent (75%) of the total trust assets shall be invested in real property (including fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon), interests in mortgages on real property, shares in other real estate investment trusts, cash and cash items (including receivables) and Government securities; provided, that the trust manager(s) or officers shall not have the power to invest in severed mineral, oil or gas royalty interests.

(F) The trust manager(s) and the officers of the trust shall receive such compensation as may be provided in the declaration of trust, the by-laws or as determined by majority vote of the holders of all the outstanding shares.

## Service of Process on Real Estate Investment Trust

Sec. 5. The resident trust manager(s) and any one of them if more than one and any officer of the trust shall be an agent of such trust upon whom any process, notice, or demand required or permitted by law to be served upon the trust may be served.

## General Powers of Real Estate Investment Trust

Sec. 6. (A) Subject to the provisions of paragraphs (B) and (C) of this Section, each real estate investment trust shall have power:

(1) To have perpetual succession by its trust name unless a limited period of duration is stated in its declaration of trust.

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

(3) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property or any interest therein, wherever situated, as the purposes of the trust shall require, but the trust shall not own more than one thousand (1,000) acres outside the corporate limits of a town or city at any one time.

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

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

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

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

(8) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district or possession of the United States, or in any foreign country.

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

(10) To make and alter by-laws, not inconsistent with its declaration of trust or with the laws of this state, for the administration and regulation of the affairs of the trust.

(11) To cease its trust activities and terminate its existence by voluntary dissolution.

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

(B) Nothing in this Section grants any authority to officers or trust manager(s) of a real estate investment trust to perform any of the foregoing powers inconsistent with the limitations on any of the same which may be expressly set forth in this Act or in the declaration of trust or in any other laws of this state. Authority of officers and trust manager(s) to act beyond the scope of the purpose or purposes of a real estate investment trust is not granted by any provision of this Section.

(C) Nothing contained in this Act shall be deemed to authorize any action in violation of the Anti-Trust Laws of this state as now existing or hereafter amended.

## Consideration and Payment for Shares

Sec. 7. (A) Shares may be issued for such consideration expressed in dollars as shall be fixed from time to time by the trust manager(s).

(B) The consideration paid for the issuance of shares shall consist of money paid or property actually received. Shares may not be issued until the full amount of the consideration has been paid. When such consideration shall have been paid to the trust, the shares shall be deemed to have been issued, and the shareholder entitled to receive such issue, shall be a shareholder with respect to such shares, and the shares shall be considered fully paid and non-assessable.

(C) Neither promissory notes nor the promise of future services, nor past services shall constitute payment or part payment for shares of a real estate investment trust.

(D) In the absence of fraud in the transaction, the judgment of the trust manager(s) or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

## Liability of Shareholders

Sec. 8. (A) A holder of a certificate of shares shall not be personally or individually liable in any manner whatsoever for any debt, act, omission or obligation incurred by the trust or the trust manager(s) and shall be under no obligation to the trust or to its creditors with respect to such shares other than the obligation to pay to the trust the full amount of the consideration for which such shares were issued or to be issued.

(B) Any person becoming an assignee or transferee of a certificate of shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the trust or its creditors for any unpaid portion of such consideration.

(C) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver, shall not be liable personally as a holder of shares of a trust, but the estate and funds in his hands shall be liable to pay to the trust the full amount of the consideration for which such shares were issued or to be issued.

(D) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

(E) No real estate investment trust may impose restrictions on the sale or other disposition of its shares and on the transfer thereof.

#### By-laws

Sec. 9. The initial by-laws of the trust shall be adopted by shareholders in person or by proxy. The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the shareholders. The by-laws may contain any provisions for the regulation and management of the affairs of the trust not inconsistent with law or the declaration of trust.

#### Meetings of Shareholders

Sec. 10. (A) Meetings of shareholders shall be held at such place, either within or without the state, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the principal office of the trust.

(B) An annual meeting of the shareholders shall be held at such time as may be provided in the by-laws. In the event the trust manager(s) fail to call the annual meeting at the designated time, any shareholder may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directly to any officer or trust manager of the trust. If the annual meeting of the shareholders is not called within sixty (60) days following such demand, any shareholder may compel the holding of such annual meeting by legal action directed against said trust manager(s), and all of the extraordinary writs of the common law and of a court of equity shall be available to such shareholder to compel the holding of such annual meeting. Each and every shareholder is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings.

(C) Special meetings of the shareholders may be called by the trust manager(s), any officer of the trust, the holders of not less than one-tenth ( $\frac{1}{10}$ ) of all the shares entitled to vote at the meetings, or such other persons as may be provided in the declaration of trust or the by-laws.

#### Notice of Shareholders Meetings

Sec. 11. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the trust manager(s) or any officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the shareholder at his address as it appears on the books of the trust, with postage thereon prepaid.

#### Quorum of Shareholders

Sec. 12. Unless otherwise provided in the declaration of trust, the holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of the holders of less than one-third ( $\frac{1}{3}$ ) of the shares entitled to vote and thus represented at such meeting. The vote of the holders of a majority of the shares entitled to vote and thus represented at a meeting at which a quorum is present, shall be the act of the shareholders meeting, unless the vote of a greater number is required by law, the declaration of trust or by-laws.

#### Voting of Shares

Sec. 13. (A) Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

(B) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, but in no event shall it remain irrevocable for a period of more than eleven (11) months.

(C) (1) At each election for trust manager(s) every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are trust manager(s) to be elected and for whose election he has a right to vote, or unless expressly prohibited by the declaration of trust, to cumulate his votes by giving one (1) candidate as many votes as the number of such trust manager(s) multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) No amendment of the declaration of trust prohibiting the right of cumulative voting shall be effective unless at least sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the outstanding shares entitled to vote upon such amendment shall have been voted in favor of such amendment.

(3) Any shareholder who intends to cumulate his votes as herein authorized shall give written notice of such intention to the trust manager(s) on or before the day preceding the election at which such shareholder intends to cumulate his votes.

#### Dividends

Sec. 14. (A) The trust manager(s) may from time to time, declare and the trust may pay, dividends on its outstanding shares in cash, in property, or in its own shares, except when the trust is insolvent or when the payment thereof would render the trust insolvent, or when the declaration or payment thereof would be contrary to any restrictions contained in the declaration of trust.

(B) The trust manager(s) must, when requested by the holders of at least one-third ( $\frac{1}{3}$ ) of the outstanding shares of the trust, present written reports of the situation and amount of business of the trust and, subject to limitations on the authority of the trust manager(s) by provisions of law, or the declaration of trust or the by-laws, the trust manager(s) shall declare and provide for payment of such dividends of the profits from the business of the trust as such trust manager(s) shall deem expedient.

#### Liability of Trust Manager(s)

Sec. 15. (A) In addition to any other liabilities imposed by law upon trust manager(s) of a real estate investment trust:

(1) The trust manager(s) of a trust who vote for or assent to any distribution of assets of a trust to its shareholders during the liquidation of the trust without the payment and discharge of, or making adequate provisions for, all known debts, obligations and liabilities of the trust shall be jointly and severally liable to the trust for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the trust are not thereafter paid and discharged.

(2) The trust manager(s) of a trust who vote for or assent to the making of a loan to an officer or trust manager(s) of the trust or the making of any loans secured by the shares of the trust, shall be jointly and severally liable to the trust for the amount of such loan until the repayment thereof.

(3) If the trust shall commence operations before the beneficial ownership is held by one hundred (100) or more persons with no five (5) persons owning more than fifty per cent (50%) of the total number of outstanding shares of beneficial interest, the trust manager(s) who assent thereto shall be jointly and severally liable to the trust for all debts and obligations incurred by the trust prior to the time the beneficial ownership is so held, but such liability shall be terminated when the trust has actually issued the required number of shares.

(B) The trust manager(s) shall not be liable under Subsection 1 of paragraph (A) of this Section if, in the exercise of ordinary care, in good faith, in determining the amount available for any such dividend or distribution, he considered the assets to be of their book value.

(C) A trust manager(s) shall not be liable for any claims or damages that may result from his acts in the discharge of any duty imposed or power conferred upon him by the trust, if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the trust.

(D) No trust manager shall be liable for any act, omission, loss, damage, or expense arising from the performance of his duty under a real estate investment trust, save only for his own willful misfeasance or malfeasance or negligence.

#### Share as Personal Property

Sec. 16. A share of beneficial ownership in a real estate investment trust shall be considered personal property.

#### Joinder of Shareholders Not Required

Sec. 17. The joinder of shareholders in any sale, mortgage, lease, or other disposition of all or any part of assets of a real estate investment trust shall not be required.

#### Books and Records

Sec. 18. (A) Each trust shall keep complete and correct books of account and shall keep minutes of the proceedings of its shareholders and trust manager(s) and shall keep at its principal office or place of business a record of its shareholders giving the names and addresses of all shareholders and the number of shares held by each.

(B) Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least five per cent (5%) of all the outstanding shares of a trust, upon written demand stating the purpose thereof shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders, and shall be entitled to make extracts therefrom.

(C) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel production, for examination by such shareholder, of the books and records of account, minutes, and record of shareholders of a trust.

#### Transfer of Shares

Sec. 19. The shares of ownership shall be transferable by an appropriate instrument in writing and by the surrender of the shares of ownership to the trust manager(s) or to the

persons designated by them, but no transfer shall be of any effect as against the trust or the trust manager(s) until it has been recorded upon the books of the trust kept for that purpose.

#### Termination and Liquidation

Sec. 20. A real estate investment trust may be dissolved by the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the owners of shares of the trust. Upon receiving such vote, the trust manager(s) shall liquidate the trust and distribute the remaining property and assets of the trust among its shareholders in accordance with their respective rights and interests after applying such property as far as it will go to the just and equitable payment of the liabilities and obligations of the trust. Upon the filing by the trust manager(s) of a withdrawal of assumed name certificate as provided by law, the trust shall cease to carry on its business, except in so far as may be necessary for the winding up thereof.

#### Greater Voting Requirements

Sec. 21. Whenever, with respect to any action taken by the shareholders of a trust, the declaration of trust requires the vote or concurrence of the holders of a greater portion of the shares than is required by this Act, with respect to such action, the provisions of the declaration of trust shall control.

#### Waiver of Notice

Sec. 22. Whenever any notice is required to be given to any shareholder of a trust under the provisions of this Act or under the provisions of the declaration of trust or by-laws of the trust, a waiver thereof in writing, signed by the person or persons entitled to such no-

tice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

#### Right to Amend Declaration of Trust

Sec. 23. A real estate investment trust may amend its declaration of trust, from time to time, in any and as many respects as may be desired, so long as its declaration of trust as amended contains only such provisions as may be lawfully contained in original declaration of trust at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. The declaration of trust may be amended upon receipt of the affirmative vote of the holders of at least two-thirds ( $\frac{2}{3}$ ) of the outstanding shares of the trust. Any and all amendments to the declaration of trust shall be made of record in the same manner as the original declaration of trust.

#### Cases Not Provided For

Sec. 24. In any case not provided for in this Act, the rules of law and equity, including the law of merchant shall govern. For purposes of the Texas Trust Act and this Act, a real estate investment trust created hereunder shall be considered a "business trust." Any unincorporated trust which does not meet the requirements of this Act shall be treated as an unincorporated association pursuant to Chapter 2 of this Title 105.

[Acts 1961, 57th Leg., p. 873, ch. 384.]

## TITLE 106

### PATRIOTISM AND THE FLAG

#### Article

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- 6145-4. Old Galveston Quarter.
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- 6145-6. State Archeologist; Transfer; Jurisdiction.
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#### Art. 6139. Protecting the Flag

Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a repre-

sentation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same suit.

[Acts 1925, S.B. 84.]

#### Art. 6140. Definition

The word "flag," as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America.

[Acts 1925, S.B. 84.]

#### Art. 6141. Prima Facie Evidence

The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law.

[Acts 1925, S.B. 84.]

#### Art. 6142. Exceptions

The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations, nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement.

[Acts 1925, S.B. 84.]

**Art. 6142a. Clarifying Description of Texas Flag**

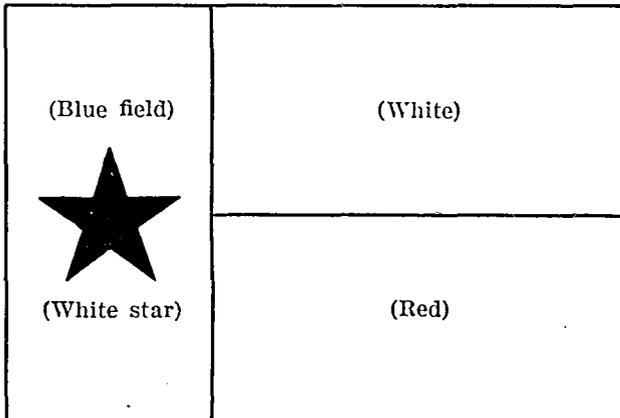
**Purpose**

Sec. 1. This act of the Legislature is not a substitute for any previous legislation pertaining to the Lone Star Flag of Texas which may have been passed by either the Republic of Texas or the Legislature of this State, but the sole purpose of this act is to clarify the description of the Texas Flag, to standardize the star in the blue field, and to outline some important rules to govern the correct use of the Texas Flag.

**Illustrating Texas Flag**

Sec. 2. A drawing of the Texas Flag to illustrate the general outline of the three stripes, and the star in the blue stripe:

The Texas Flag



[A2167]

**Salute to the Texas Flag**

Sec. 3.

“Honor the Texas Flag;  
I pledge allegiance to thee,  
Texas, one and indivisible.”

**Description of the Texas Flag**

Sec. 4. The Texas Flag is an emblem of four sides, and four angles of ninety (90) degrees each. It is a rectangle having its width equal to two-thirds of its length. The flag is divided into three equivalent parts, called bars or stripes, one stripe being blood red, one white, and the other azure blue. These stripes are rectangles, also, and they are exact duplicates of one another in every respect. The width of each stripe is equal to one-half of its length, or one-third of the length of the Flag, while the length of each stripe is equal to the width of the Flag, or two-thirds of the length of the Emblem.

One end of the Flag is blue, and it is called the Flag's "right." This stripe is a perpendicular bar next to the staff or the halyard, and it is attached by means of a heading made of strong and very durable material. The remaining two-thirds of the Flag is made up of two

horizontal bars of equal width, one being white and the other red, and this end of the Emblem is called the Flag's "left." Each one of the stripes is perpendicular to the blue stripe, and when the Flag is displayed on a flagpole or staff, or flat on a plane surface, the white stripe should always be at the top of the Flag, with the red stripe directly underneath it. Thus, each stripe on the Texas Flag touches each of the other stripes, which signifies that the three colors are mutually dependent upon one another in imparting the lessons of the Flag: bravery, loyalty, and purity.

**Description of the Star**

Sec. 5. In the center of the blue stripe is a white star of five points. One point of this star is always at the top, and in a vertical line drawn from one end of the blue stripe to the other, and midway between its sides. This line is the vertical axis of the blue stripe, and it is perpendicular to the horizontal axis at the central point of the stripe. The two lowest points of the star are in a line parallel to the horizontal axis, and the distance from the topmost point of the star to the line through these two points is equal to approximately one-third of the length of the blue stripe, or one-third of the width of the Flag. The center of the star is at the point of intersection of the horizontal axis with the vertical axis, or at the central point of the blue stripe. The other two points of the star are above the horizontal axis, and near the sides of the blue stripe.

A few fundamental facts concerning the dimensions of the star and its position in the blue stripe are outlined here for the assistance of makers of the Texas Flag:

It is a white star of five points.

The center of the star is at the central point of the blue stripe.

The five points of the star are on a circle whose center is at the central point of the blue stripe.

The length of the diameter of the circle which passes through the five points of the star is always equal to three-fourths of the width of the blue stripe, or three-eighths of the width of the Flag.

The radius of the circle which passes through the five points of the star, then, is equal to three-eighths of the width of the blue stripe.

The topmost point of the star is at the point of intersection of this circle with the vertical axis of the blue stripe.

The two lowest points of the star are in a line parallel to the horizontal axis of the blue stripe, and the distance from the topmost point of the star to this line is equal to approximately one-third of the length of the blue stripe, or it is equal to approximately one-third of the width of the Flag.

The other two points of the star are above the horizontal axis, and near the sides of the blue stripe, and these two

points are in a line parallel to the horizontal axis.

The five angles of the points of the star are equal to one another, and each angle contains thirty-six (36) degrees.

The geometrical figure in the center of the star is a regular pentagon, or polygon of five equal sides and five equal angles, and each angle of the pentagon contains one hundred and eight (108) degrees.

With the use of a ruler and a compass, this star is very easily constructed. First, draw the line through the middle points of the ends of the blue stripe, or draw the vertical axis; then, draw the line through the middle points of the sides of the blue stripe, or draw the horizontal axis. These two axes intersect in the central point of the blue stripe, and they bisect each other.

Now, divide the horizontal axis into eight equal parts, and draw a circle with its center at the central point of the blue stripe and its radius equal to three-eighths of the length of the horizontal axis. The point in which this circle intersects the vertical axis above the central point of the blue stripe is the topmost point of the star.

Next, find the middle point of the radius of this circle which coincides with one end of the horizontal axis. Using this point as a center, and with a radius equal to the distance to the topmost point of the star, describe an arc intersecting the opposite end of the horizontal axis. The distance from the last point found to the topmost point of the star is equal to one-fifth of the circumference of the circle.

Then, beginning at the topmost point of the star, and using the measure just found as a unit of length, divide the circumference of the circle into five equal parts. The four additional points found on the circle in this way are the remaining points of the star. Two of these points are above the horizontal axis and two of them are below it, while two of the points are at the left of the vertical axis and two are at the right of it.

Now, connect the topmost point of the star with the two points below the horizontal axis. Then, connect the point which is below the horizontal axis and at the left of the vertical axis with the point which is above the horizontal axis and at the right of the vertical axis. Likewise, connect the point which is below the horizontal axis and at the right of the vertical axis with the point which is above the horizontal axis and at the left of the vertical axis. Finally, connect the two points which are above the horizontal axis and on opposite sides of the vertical axis, and the symmetrical figure thus completed is the beautiful Lone Star of the Texas Flag.

#### Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas Flag is displayed out-of-doors, it must be on either a flagpole or a staff, and the staff should be at least two

and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be unfurled out-of-doors earlier than sunrise, and it should be taken down, or furled, not later than sunset. Of course the Flag may be flown for any length of time between sunrise and sunset, as may be directed by proper authority.

It is disrespectful to the Texas Flag to leave it unfurled in inclement weather, such as rain, sleet, snow, hail, or storm, and it should never be left out-of-doors at night.

The Texas Flag shall be displayed on all State Memorial Days, and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the National Colors, when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown from the same halyard as the Flag of the United States of America is flown, it must be underneath our National Colors.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it must be unfurled after our National Colors, and it must be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while our National Colors are on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the radiator cap.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aeroplane.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either over the middle of streets, or as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should not be carried flat or horizontally but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-fourth of the distance down the flagpole, and there leaving it during the time it is to be displayed, observing the rule, of course, that it must not be raised before sunrise, and it must be taken down each day before sunset. In taking the Flag down, it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning, and that privately; or this should be done by some other method in

keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas.

[Acts 1933, 43rd Leg., p. 186, ch. 87; Acts 1965, 59th Leg., p. 138, ch. 55, § 1, eff. Aug. 30, 1965.]

#### Art. 6142b. Public Display of Texas Flag; Position

On every occasion of public display of the Texas flag, within the State of Texas, it shall occupy the position of honor when displayed in company with the flags of other states, nations or international organizations; provided, however, that when the United States flag is displayed with the Texas flag, the national flag shall occupy such position of honor.

[Acts 1955, 54th Leg., p. 361, ch. 77, § 1.]

#### Art. 6143. State Tree

The Pecan Tree shall be the State tree of Texas and it shall be the duty of the State Board of Control and the State Parks Board to give due consideration to the Pecan Tree when planning beautification of State Parks or other public property belonging to the State.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 234, ch. 161, § 1.]

#### Art. 6143a. State Motto

Be it Resolved, By the House of Representatives, the Senate concurring, that the word "Friendship" be and is hereby adopted and declared to be the motto of the State of Texas.

[Acts 1930, 41st Leg., 4th C.S., p. 105, H.C.R. No. 22.]

#### Art. 6143b. State Song

Resolved by the Senate, of the State of Texas, the House of Representatives concurring:

That, "Texas, Our Texas" by William J. Marsh and Gladys Yoakum Wright be adopted as the State Song for the State of Texas.

[Acts 1929, 41st Leg., 1st C.S., p. 286, S.C.R. No. 6.]

#### Art. 6143bb. State Flower Song

Resolved by the House of Representatives, the Senate concurring, That it adopt the Bluebonnet song as the State Flower Song.

[Acts 1933, 43rd Leg., p. 930, H.C.R. No. 24.]

#### Art. 6143c. State Bird

Resolved by the Senate of the State of Texas, the House of Representatives concurring:

That the recommendations of the Texas Federation of Women's Clubs be and are hereby adopted and that the mocking bird be and the same is hereby declared to be the state bird of Texas.

[Acts 1927, 40th Leg., p. 486, S.C.R. No. 8.]

#### Art. 6143.1 Thrashing Pecans; Penalty

Sec. 1. Wherever the term thrash is used herein, it shall mean to beat or strike with a stick or other object.

Sec. 2. It is unlawful for any person to thrash pecans from any pecan tree or cause pe-

cans to fall from the tree by any means other than the fall caused by nature, unless:

(1) the tree is located on land owned by the person doing the thrashing; or

(2) in case the tree is located on privately-owned land, he has the written consent of the owner or lessee or his authorized agent; or

(3) in case the tree is located on land owned by the state, a county, a city, a school district, or another district or political subdivision of the state, he has the written consent of an officer or agent of the agency or political subdivision controlling the property or, if the land is within the boundaries of an incorporated city, the written consent of the mayor, or, if the land is not within the boundaries of any incorporated city, the county judge of the county.

Sec. 3. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$5 nor more than \$300 or by confinement in the county jail for not more than three months, or both.

[Acts 1971, 62nd Leg., p. 1289, ch. 331, eff. Aug. 30, 1971.]

**Art. 6144. Repealed by Acts 1953, 53rd Leg., p. 27, ch. 21, § 1**

**Art. 6144a. Texas Week**

Therefore, be it resolved, that the Senate of Texas, the House of Representatives concurring therein, does here and now approve this Resolution and set apart annually the entire week in which March the Second comes as a season to be known as Texas Week; and by this action of the Legislature His Excellency, the Governor of Texas, is hereby vested with the power and is besought to issue and to publish annually his proclamation outlining the purpose and the spirit of Texas Week and urging every citizen of this State to exalt and extol the highest and the best cultural and spiritual values of Texas throughout Texas Week; and

Be it further resolved, that it is now and ever shall be in direct violation of the purpose and spirit of Texas Week to observe it as a season of holidays; and the Legislature of the State of Texas does affirm that, under no condition, is Texas Week to be looked upon as a week of holidays; but on the other hand and quite to the contrary, it is hereby alleged that during Texas Week every citizen of this State is encouraged to work, insofar as he is able, and to do his work a bit better than he does it during other weeks of the year; and

Therefore, be it further resolved, that the Legislature by this Resolution does urge His Excellency, the Governor of Texas, to suggest to the citizens of this State in his annual proclamations that they observe the following forms of activity, and from time to time such other forms of observance that he may deem

wise, insofar as his suggestions do not conflict with the purpose and spirit of Texas Week as outlined in this Resolution:

First, it is enjoined that every home; every office, place of business and industry; every school, parochial, private, or public; every college and university; and all institutions of whatever class or character, educational or eleemosynary, be requested through this Resolution and the annual proclamations of the Governor of Texas to hoist a Texas Flag from some prominent point of vantage and let it be unfurled each day during Texas Week; and

Second, it is now and ever shall be expected that all teachers and pupils in every school of whatever class or classification shall observe Texas Week appropriately in general assemblies, in classes, clubs, and in any and all other groups as they may be assembled for school work; that schools be encouraged to assemble exhibits of Texas products, pictures, relics, books and documents, and hang in permanent places pictures of famous heroes of Texas; that schools which are in reach of battle fields, missions, and other places of historical interest and importance are hereby encouraged to make patriotic pilgrimages to such places of fame during Texas Week; but it is understood that no school is to celebrate Texas Week as a season of holidays. On the other hand, better work shall be expected of all schools throughout Texas Week; and

Third, it is enjoined upon commerce and industry, professional life and activity, civic activity, and every other kind of occupational pursuit, in which Texas citizens may be engaged, that they recognize and observe Texas Week in a fitting manner. To this end it is recommended that courts in session, luncheon clubs, women's organizations, churches, conventions, lodges, and the Legislature when in session, all departments of government, city, county, and State; and any and every other group of citizens for whatever purpose they may be assembled, be urged now and ever in the future to observe Texas Week appropriately by rendering programs in keeping with the purpose and spirit of this occasion as set forth in this Resolution; and

Fourth, that every citizen, old or young, within the borders of this great State be urged now and ever in the future, by this Act of the Legislature and in accordance with the proclamations of the Governor of Texas issued and published annually to be seen and read by all citizens of Texas, to exalt and extol the cultural and spiritual values which we cherish so fondly; the blessed and romantic traditions of our glorious history; the high standards and lofty ideals of statesmanship, of scholarship, of leadership, of character, and of

service which our forefathers gave to us as our rare and rich heritage, and to give thanks for this marvelous inheritance as we faithfully and conscientiously observe Texas Week.

[Acts 1932, 42nd Leg., 3rd C.S., p. 131, S.C.R. No. 8.]

**Art. 6144b. Expired**

**Art. 6144c. Executed**

**Art. 6144cc. Audit of Expenditures**

It is hereby declared the intention of the Legislature that an audit be made of the expenditure of the funds appropriated under the provisions of House Bill No. 11,<sup>1</sup> Acts of the Regular Session of the Forty-fourth Legislature, and all funds appropriated hereby. Said audit shall be made by the State Auditor or under his direction. It shall be the duty of such Auditor or those working under his direction to make such audit of the expenditure of funds appropriated under the provisions of House Bill No. 11, Acts of the Regular Session of the Forty-fourth Legislature and hereby appropriated as soon as practicable, and furnish the Legislature with a copy of said report. There is hereby appropriated out of the unexpended balance of said funds One Thousand (\$1,000.00) Dollars or so much as may be necessary for the purpose of making such audit.

[Acts 1937, 45th Leg., p. 641, ch. 314, § 4.]

<sup>1</sup> Article 6144c.

**Art. 6144d. Texas Conservation and Beautification Week**

Resolved, by the Senate of the State of Texas, the House of Representatives concurring, that Texas Conservation and Beautification Week be observed each year at that time which shall include April twenty-first, San Jacinto Day, and April twenty-fourth, National Wildflower Day, said week beginning two days before the twenty-first of April and ending two days after April twenty-fourth, and that said week shall be observed so that it contributes to the conservation and beautification of the State and to the happiness and lasting benefit of its people, thus making known, enforcing and teaching respect for the written and unwritten conservation laws of our country thus showing our respect and appreciation for all that is ours to cherish while we live and should preserve for posterity here where "The heavens declare the glory of God and the firmament showeth His handiwork."

[Acts 1935, 44th Leg., p. 1275, S.C.R. No. 28.]

**Art. 6144e. Advertising Resources of Texas**

Secs. 1, 2. Repealed by Acts 1963, 58th Leg., p. 370, ch. 137, § 5.

**Duties of the Texas Highway Department**

Sec. 3. (a) For the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of

this state and attracting traffic thereto, the Department is empowered to compile and publish, for free distribution, such pamphlets, bulletins, and documents as it will deem necessary and expedient for informational and publicity purposes concerning the highways of the state, and with respect to public parks, recreational grounds, scenic places, and other public places and scenic areas or objects of interest, data as to distances, historical facts, and other items or matters of interest and value to the general public and road users; and said Department is authorized and empowered to make or cause to be made from time to time a map or maps showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by said highways, and may cause to be printed, published, and prepared in such manner or form as the Department may deem best, all of such information and data and provide for the distribution and dissemination of the same in such manner and method and to such extent as in the opinion of the Department will best serve the motoring public and road users. The Department shall maintain and operate Travel Information Bureaus at the principal gateways to Texas for the purpose of providing road information, travel guidance, and various descriptive materials, pamphlets, and booklets designed to furnish aid and assistance to the traveling public and stimulate travel to and within Texas. The Texas Highway Department is authorized and empowered to pay the cost of all administration, operation, and the cost of developing and publishing various material and the dissemination thereof, including the cost of operating Travel Information Bureaus from highway revenues. The Texas Highway Department is further empowered to receive and administer a legislative appropriation from the general fund for the specific purpose of purchasing advertising space in periodicals of national circulation, and/or time on broadcasting facilities. The Department shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope, and for the contracting of space in magazines, papers, and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and corporations outside the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving or still pictures in the state, and provide for the showing of the films when taken, and the Department may join with other governmental departments of the state in publishing such informational publicity matter.

(b) The Highway Department may accept contributions for the above purposes from private sources, which funds may be deposited in a bank or banks to be used at the discretion of

the Department in compliance with the wishes of the donor.

**Duties of the Texas Industrial Commission**

Sec. 4. For the purpose of satisfying provisions of existing statutes and the recently adopted amendment to Section 56 of Article XVI of the Constitution, the Texas Industrial Commission shall pursue a program in line with the following subsections:

(a) Investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Texas business, industry, agriculture, and commerce within and outside the state.

(b) Plan and develop an effective business information service both for the assistance of business and industry of the state and for the encouragement of business and industry outside the state to use economical facilities within the state.

(c) Compile, collect and develop periodicals or otherwise make available information relating to current business conditions.

(d) Conduct and encourage research designed to further new and more extensive uses of the natural and other resources of the state, and designed to develop new products and industrial processes.

(e) Encourage and develop commerce with other states and foreign countries.

(f) Cooperate with interstate commissions, engage in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce.

(g) Cooperate with other State Departments and with Boards, Commissions and other State Agencies in the preparation and coordination of plans and policies for the development of the state as such development may be appropriately directed or influenced by State Agencies.

(h) Promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business.

(i) Advertise and disseminate information as to natural resources, desirable locations and other advantages for the purpose of attracting business to locate in this state.

(j) Aid the various communities in this state in getting business to locate therein.

(k) The Commission shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope; and for the contracting of time on broadcasting facilities, space in magazines, papers, and periodicals for the

publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and to corporations outside of the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving pictures or still pictures in the state, and provide for the showing of the films when taken and the Commission may join with other governmental departments of the state in publishing such information or publicity matter.

[Acts 1959, 56th Leg., p. 431, ch. 193; Acts 1963, 58th Leg., p. 370, ch. 137, § 5, eff. Aug. 23, 1963.]

**Art. 6144f. Texas Tourist Development Agency**

**Texas Tourist Development Board**

Sec. 1. (a) The control and management of the Texas Tourist Development Agency is vested in a board of nine members to be known as the Texas Tourist Development Board, hereafter referred to as the board. The members of the board shall be appointed by the governor with the advice and consent of the Senate. In making appointments to the board, the governor shall, as far as possible, attempt to maintain a balanced geographical representation of all parts of the state.

(b) To be qualified for appointment to the board, a person shall be a citizen of the State of Texas and shall be knowledgeable in the field of advertising and promotion.

(c) The members of the Advisory Board of the Texas Tourist Development Agency on the effective date of this Act shall continue in office as members of the Texas Tourist Development Board for the remainder of their terms. The governor shall appoint three additional members to serve on the board and shall designate one appointee to serve until 1971, one appointee to serve until 1973, and one appointee to serve until 1975. Except for the previously specified terms of office, members of the board shall serve for six-year terms. Any vacancy shall be filled by appointment for the unexpired portion of the term.

(d) After the expiration of the term of the current chairman of the board, the board shall elect a new chairman every two years. The board shall enact bylaws, rules, and regulations necessary for the successful management and operation of the Texas Tourist Development Agency. Any action taken by the Texas Tourist Development Agency before the effective date of this Act is still valid and any contracts made by the board before the effective date of this Act shall continue in force until altered by the board. Any funds which were previously appropriated to the Texas Tourist Development Agency before the effective date of this Act shall be transferred to the Texas Tourist Development Board and shall be spent by the board as provided by the Legislature.

(e) A member of the board is not entitled to a salary for duties performed as a member of

the board; however, each member is entitled to \$25 for each day he is in attendance at meetings or on authorized business of the board. Each member of the board is also entitled to reimbursement for his actual expenses incurred in performing official duties.

#### Administering Funds

Sec. 2. The Texas Tourist Development Agency shall be charged with the responsibility of administering funds appropriated to it in accordance with the provisions of this Act so far as possible to achieve the following:

(a) Promote and advertise, by means of radio, television, and newspapers and other means deemed appropriate, tourism to Texas by non-Texans, including persons from foreign countries, and to promote travel by Texans to the State's scenic, historical, natural, agricultural, educational, recreational and other attractions.

(b) Coordinate and stimulate the orderly but accelerated development of tourist attractions throughout Texas.

(c) Conduct in the broadest sense a public relations campaign to create a responsible and accurate national and international image of Texas.

(d) Cooperate fully with the agency in charge of operations of the State's park system in all matters relating to promotion of tourism.

(e) Cooperate with the Texas Highway Commission in the administration of the Highway Commission's collateral program of highway map distribution and operation of Travel Information Bureaus and other tourist related functions conducted by the Texas Highway Commission.

(f) Encourage Texas communities, organizations, and individuals to cooperate with its program by their activities and use of their own funds and to collaborate with these organizations and other governmental entities in the pursuit of the objectives of this Act.

#### Executive Director; Employment; Duties

Sec. 3. (a) The board shall employ an executive director to serve at the pleasure of the board as chief administrative officer of the Texas Tourist Development Agency.

(b) Subject to the approval of the board, the executive director may employ any personnel and consultants on a fee or other basis that are necessary and may secure any equipment that is necessary to accomplish the purposes of this Act.

(c) In addition to his other duties, the executive director shall keep full and accurate minutes of all transactions and proceedings of the board, and he is the custodian of all of the files and records of the board.

(d) The executive director with the consent of the board may, in the name of the Texas Tourist Development Agency, accept donations

and gifts of property and money which may be made to further the purposes of the agency.

#### Names and Pictures of Living State Officials

Sec. 4. Neither the name nor the picture of any living State Official shall ever be used in any manner for advertising purposes under the provisions of this Act.

[Acts 1963, 58th Leg., p. 370, ch. 137, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 1393, ch. 423, §§ 1, 2, eff. Sept. 1, 1969.]

#### Art. 6144g. Texas Fine Arts Commission

##### Creation and Establishment of Commission; Membership

Sec. 1. The Texas Commission on the Arts and Humanities is established. The Commission shall consist of eighteen (18) members representing all fields of the arts and humanities, to be appointed by the Governor with the advice and consent of the Senate from among private individuals who are widely known for their professional competence and experience in connection with the arts and humanities.

##### Terms of Office

Sec. 2. The term of office of each member shall be for six (6) years, provided however, that of the members first appointed, six (6) shall be appointed for terms of two (2) years from the effective date of this Act, six (6) for terms of four (4) years from such effective date and six (6) for terms of six (6) years from such date.

##### Duties and Responsibilities

Sec. 3. The duties and responsibilities of the Commission shall be:

a. To foster the development of a receptive climate for the arts and humanities that will culturally enrich and benefit the citizens of Texas in their daily lives, to make Texas visits and vacations all the more appealing to the world and to attract to Texas residency additional outstanding creators in the fields of the arts and humanities through appropriate programs of publicity and education, and to direct other activities such as the sponsorship of lectures and exhibitions and central compilation and dissemination of information on the progress of the arts and humanities in Texas.

b. To act as an advisor to the State Building Commission, State Board of Control, Texas State Historical Survey Committee, Texas State Library, Texas Tourist Development Agency, State Highway Department and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts and humanities in Texas.

c. To act in an advisory capacity relative to the creation, acquisition, construction, erection or remodeling by the state of any work of art.

d. To act in an advisory capacity, when requested by the Governor, relative to the

artistic character of buildings constructed, erected or remodeled by the state.

#### Powers

Sec. 4. The Commission shall have power:

a. To elect from its members a chairman and other such officers as may be desirable; provided that the first chairman of the Commission shall be named by the Governor and shall call the first meeting of the Commission and serve as such until his successor shall be elected by the Commission.

b. To hold such meetings, at such places within the State of Texas and at such times as the Commission may designate.

c. To conduct research, investigations, and inquiries as may be necessary so as to inform the Commission of the development of the arts and humanities in Texas.

d. To appoint committees from its membership and prescribe their duties.

e. To appoint consultants to the Commission.

f. To make rules and regulations for its government and that of its officers and committees; and to prescribe the duties of its officers, consultants, and employees.

g. To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes.

#### Donations; Appropriations; Audit of Funds

Sec. 5. The Commission may accept on behalf of Texas such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic and cultural resources of Texas. Appropriations may be made by the Legislature to the Commission to carry out the purposes of this Act. All funds shall be subject to audit by the State Auditor.

#### Compensation

Sec. 6. The members of the Commission shall receive no compensation for their services, but shall be paid their actual traveling and other necessary expenses in the performance of their duties, not to exceed the amount authorized to be paid a member of the Legislature.

#### Annual Reports

Sec. 7. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities.

#### Abolition of Board of Mansion Supervisors

Sec. 8. The Board of Mansion Supervisors is hereby abolished and all powers, duties and authority heretofore vested in the Board of Mansion Supervisors are hereby transferred to the Texas Fine Arts Commission provided for

herein. The terms of office of the present members of the Board of Mansion Supervisors are hereby terminated.

[Acts 1965, 59th Leg., p. 674, ch. 323, eff. Sept. 1, 1965; Acts 1967, 60th Leg., p. 53, ch. 28, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1956, ch. 597, §§ 1 to 3, eff. Aug. 30, 1971.]

Section 4 of the 1971 amendatory act provided: "This amendatory Act does not affect the terms of present members of the commission. It is the intent of the Legislature in enacting the amendments contained in this Act to enlarge the scope of the commission's work to include the humanities as well as the arts."

### Art. 6144h. Texas Distinguished Service Medal

#### Creation

Sec. 1. There is hereby created a medal to be known as the Texas Distinguished Service Medal.

#### Purpose

Sec. 2. The award of the Texas Distinguished Service Medal shall be made in recognition of persons who reside in Texas and who have achieved such conspicuous success while rendering outstanding service to the State of Texas and its citizens as to reflect great credit not only upon themselves, but upon their profession and the State of Texas as a whole.

#### Awards Committee

Sec. 3. (a) A committee to be known as the Texas Distinguished Service Awards Committee shall be appointed by the Governor with the advice and consent of the Senate to consider and approve or reject, by majority vote, recommendations for the award of the Texas Distinguished Service Medal.

(b) The committee shall consist of six members appointed for terms of six years. The initial appointments to the committee shall be made so that two members serve until January 31, 1971, two members serve until January 31, 1973, and two members serve until January 31, 1975. Thereafter members shall serve terms of six years.

(c) The committee shall select one of its members to act as chairman of the committee for a term of one year, or until his successor is selected and has qualified.

(d) Vacancies on the committee shall be filled by appointment of the Governor with the advice and consent of the Senate, for the remainder of the term.

(e) Members of the committee shall serve without pay but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

(f) No more than five persons shall be eligible to receive the decoration in any one calendar year, except that in exceptional circumstances, additional decorations may be awarded by the Governor if authorized by concurrent resolution of the Legislature of the State of Texas.

#### Award for Prior Service

Sec. 4. Not more than 10 awards of the Texas Distinguished Service Medal may be

made for achievement attained or service rendered prior to the effective date of this Act.

#### Recommendations

Sec. 5. It shall be the privilege of any individual having personal knowledge of an achievement or rendition of service believed to merit the award of the decoration to submit a recommendation in letter form to the committee giving an account of such achievement or service, accompanied by such statements, affidavits, records, photographs, or other material as may be deemed requisite to support and amplify the stated facts.

#### Presentation

Sec. 6. The presentation of the Texas Distinguished Service Medal to the recipient shall be made by the Governor in an appropriate ceremony.

#### Design and Manufacture

Sec. 7. (a) The decoration shall display the Great Seal of the State of Texas with the words "Distinguished Service Medal" engraved in a circle thereon, and shall be suspended from a bar of red, white, and blue.

(b) The Governor shall approve the design and shall authorize the casting of the medal in any manner he may deem proper. The cost of acquiring the medals shall be charged against funds appropriated by the Legislature to the Governor's office.

[Acts 1969, 61st Leg., p. 282, ch. 111, eff. May 1, 1969.]

### Art. 6145. Texas Historical Commission

#### Creation of Permanent Committee; State Agency

Sec. 1. There is hereby created a permanent historical commission of eighteen members to be known as the Texas Historical Commission and is hereby declared to be a state agency for the purpose of providing leadership and coordinating services in the field of historical preservation.

#### Change of Name

Sec. 1a. From and after the effective date of this amendment the Texas State Historical Survey Committee shall be known as the Texas Historical Commission.

#### Term of Office of Members; Vacancies; Qualifications

Sec. 2. The term of office of the members of the Texas Historical Commission shall be six years. One-third of the members shall be appointed every two years by the Governor with the advice and consent of the Senate. Provided, however, that the present eighteen members now constituting the Texas State Historical Survey Committee, hereafter referred to as the Commission, shall continue to serve as members of the Commission for the term of office to which they were appointed. One-third of the membership of the Commission shall serve for a term of office to expire January 1, 1975; one-third of the membership shall serve for a term to expire January 1, 1977; one-third of the membership shall serve for a term to ex-

pire January 1, 1979. All vacancies occurring on the Commission shall be filled by the Governor with the advice and consent of the Senate for the unexpired term of office. The members of the Commission shall be citizens of Texas, who have demonstrated an interest in the preservation of our historical heritage, and in making appointments, the Governor shall seek to have each geographical section of the state represented on the Commission as nearly as possible.

#### Meetings; Officers; Rules and Regulations

Sec. 3. The Commission shall hold regular meetings in January, April, July, and October of each year. On the first scheduled meeting after the effective date of this Act, the Commission shall select a chairman, vice-chairman, and secretary from its members, who shall serve until the January 1975 meeting and thereafter the Commission shall select a chairman, vice-chairman, and secretary from its membership at each January meeting in odd numbered years. The Commission may hold such other meetings at such other times and places as shall be scheduled by it in formal sessions and as shall be called by the chairman of the Commission. The Commission shall have authority to promulgate such rules and regulations as it shall deem proper for the effective administration of the provisions of this Act.

#### Quorum

Sec. 4. A majority of the membership of the Commission shall constitute a quorum authorized to transact business of the Commission.

#### Compensation of Members; Expenses

Sec. 5. Members of the Commission shall serve without pay, but shall be reimbursed for their actual expenses incurred in attending meetings of the Commission.

#### Executive Director; Professional and Clerical Personnel

Sec. 6. The Commission shall employ a citizen of Texas as Executive Director of the Texas Historical Commission. He shall be a person of ability in organization, administration, and coordination of organizational work, with particular qualities for carrying out the purposes of the Commission. The Executive Director may employ such professional and clerical personnel as may be deemed necessary. The number of employees, their compensation, and other expenditures shall be in accordance with appropriations to the Commission by the Legislature.

#### Functions of Commission

Sec. 7. The Commission shall furnish leadership, coordination, and services to County Historical Survey Committees, Historical Societies, and the organizations, agencies, institutions, museums, and individuals of Texas with an interest in the preservation of histori-

cal heritage and shall act as a clearing house and information center for such work in Texas.

#### Consultant Services

Sec. 8. The Commission shall furnish professional consultant services to museums and to agencies, individuals, and organizations interested in the preservation and restoration of historical houses, sites, and landmarks.

#### Administration of National Historic Preservation Act; Statewide Comprehensive Historic Preservation Plan

Sec. 9. The Commission is hereby designated to administer the "National Historic Preservation Act of 1966" and any amendments thereto<sup>1</sup> and is authorized and empowered to prepare, maintain, and keep up to date a Statewide Comprehensive Historic Preservation Plan.

<sup>1</sup> 16 U.S.C.A. § 470 et seq.

#### Executive Director as State Liaison Officer

Sec. 10. The Governor shall designate the Executive Director as the State Liaison Officer and he shall act in that capacity for the conduct of relations with the representatives of the Federal Government and the respective states with regard to matters of historic preservation.

#### Application for Participation in Federal Program

Sec. 11. The Commission is authorized to apply to any appropriate agency or officer of the United States for participation in any federal program pertaining to historic preservation.

#### State Historical Marker Program; Register; Review; Approval; Designation as Official State Markers; Damage

Sec. 12. (1) The Commission shall give direction and coordination to the state historical marker program and shall have the responsibility for marking districts, sites, individuals, events, structures, and objects significant in Texas and American history, architecture, archeology, and culture, and shall keep a register thereof. To assure a degree of uniformity and quality of historical markers, monuments, and medallions within the State of Texas, the Commission shall review, pass on, or reject the final form, dimensions, text, or illustrations on any marker, monument, or medallion before its fabrication by the state, or any county, county historical survey committee, incorporated city, individual, or organization within this state. The markers so approved shall be designated by the Commission as Official Texas Historical Markers. Structures receiving the Official Texas Historical Building Medallion shall be designated by the Commission as Recorded Texas Historic Landmarks which are deemed worthy of preservation because of their history, culture, or architecture, or a combination thereof.

(2) No person may damage the historical or architectural integrity of any structure which has been designated by the Commission as a Recorded Texas Historic Landmark, without

first giving 60 days' notice to the Texas Historical Commission.

#### Direction of State Archeological Program

Sec. 13. The Commission, through the State Archeologist, shall direct the state archeological program. The program shall include a continuing inventory of non-renewable archeological resources; evaluation of known sites through testing and excavation; maintenance of extensive field and laboratory data to include collections of antiquities; consultation with state agencies and organizations and local groups concerning archeological and historical problems; and publication of the results of the program through various sources including a regular series of reports.

#### Preservation of Historic Courthouses

Sec. 14. (1) No county may demolish, sell, lease, or damage the historical or architectural integrity of any courthouse of the county, present or past, without first giving six months notice to the Texas Historical Commission.

(2) If, after notice, the Commission determines that a courthouse has historical significance worthy of preservation, the Commission shall notify the commissioners court of the county within 30 days after receiving notice from the county. A county may not demolish, sell, lease, or damage the historical or architectural integrity of any such courthouse for 180 days after receiving notice from the Commission. The Commission shall cooperate with interested persons during the 180-day period to preserve the historical integrity of any such courthouse.

(3) A county may carry out ordinary maintenance and repairs without notice to the Commission.

#### Certification as to Worthiness of Preservation of Historic Districts, Sites, Structures or Objects

Sec. 15. The Texas Historical Commission is hereby authorized to certify the worthiness of preservation to other state agencies of any historic districts, sites, structures, or objects significant in Texas and American history, architecture, archeology, and culture.

#### Stimulation of Local Activities

Sec. 16. The facilities and leadership of the Commission shall be used to stimulate the development of historical resources in every locality of Texas. Emphasis shall be upon responsibility and privilege of local effort except where the project or problem is one that clearly demands a broader approach.

#### Educational Programs, Seminars and Workshops

Sec. 17. The Commission is authorized to conduct educational programs, seminars, and workshops throughout the state covering all phases of historic preservation.

#### Purpose of Program

Sec. 18. It shall not be the purpose of this program to duplicate or replace existing histor-

ical heritage organizations and activities, but it is the purpose to give leadership, coordination, and service where it is needed and where it is desired.

**Cooperative Studies and Surveys**

Sec. 19. The Commission shall continue cooperative studies and surveys of the various aspects of historical heritage.

**Report to Governor and Legislature**

Sec. 20. The Commission shall make a report of its activities to the Governor and to the Legislature by December 1 prior to each regular session of the Legislature.

**Contracts Authorized**

Sec. 21. The Commission is authorized to enter into contracts with other state agencies or institutions and with qualified private institutions to carry out the purposes of this Act.

**Gifts, Grants, Devises and Bequests Authorized**

Sec. 22. The Commission is authorized and empowered to accept gifts, grants, devises, and bequests of money, securities, or property to carry out the purposes of this Act.

**Naming Natural Geographic Features; Responsibility Transferred to General Land Office**

Sec. 23. The responsibility for naming natural geographic features as set out in Section 9b, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), is transferred from the Texas State Historical Survey Committee to the General Land Office of the State of Texas.

[Acts 1957, 55th Leg., p. 1460, ch. 500; Acts 1963, 58th Leg., p. 521, ch. 195, §§ 1 to 3, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 54, ch. 19, § 1, eff. March 16, 1965; Acts 1971, 62nd Leg., p. 1718, ch. 496, § 1, eff. May 28, 1971; Acts 1973, 63rd Leg., p. 56, ch. 38, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 719, ch. 311, § 1, eff. Aug. 27, 1973.]

Sections 2 and 3 of Acts 1973, 63rd Leg., p. 719, ch. 311, provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), is repealed."

**Art. 6145.1 County Historical Survey Committee**

(a) The Commissioners Court of any county, upon the nomination of the county judge, may during the month of January of odd-numbered years appoint a County Historical Survey Committee, to consist of at least seven residents of the county who have exhibited interest in the history and traditions of the State of Texas, for a term of two years.

(b) The Commissioners Court may pay the necessary expenses of the committee, may authorize a car allowance and part-time compensation for the chairman of the committee, and may pay the necessary travel expenses of the

chairman and members of the committee as determined by the Commissioners Court.

(c) The committee shall institute and carry out a survey of the county to determine the existence of historical buildings, battlefields, private collections of historical memorabilia, or other historical features within the county, and shall thereafter continue to collect data on the same subject as it may become available. The data collected shall be made available to anyone interested therein, and especially to the Texas State Historical Survey Committee.

(d) The committee shall make any recommendations concerning the acquisition of property, real or personal, which is of historical significance, when requested to do so by the Commissioners Court.

(e) The committee may operate and manage any museum which may be owned or leased by the county, and may acquire artifacts and other museum paraphernalia in the name of the museum or the committee; and the Commissioners Court may appoint a board from the members of the committee to operate and manage the museum, including the supervision of any employees hired by the Commissioners Court to operate the museum.

[Acts 1963, 58th Leg., p. 433, ch. 152, § 1, eff. May 14, 1963; Acts 1971, 62nd Leg., p. 1084, ch. 233, § 1, eff. May 17, 1971.]

**Art. 6145-1. Governor James Stephen Hogg Memorial Shrine**

Art. I. There is hereby created a Governor James Stephen Hogg Memorial Shrine to be located at Quitman, Wood County, Texas, upon lands furnished for such purpose without cost to the State of Texas.

Arts. II, III. Repealed by Acts 1949, 51st Leg., p. 1373, ch. 625, § 1.

[Acts 1941, 47th Leg., p. 269, ch. 183; Acts 1945, 49th Leg., p. 535, ch. 324, § 1; Acts 1949, 51st Leg., p. 1373, ch. 625, § 1.]

**Art. 6145-2. Battleship "Texas" as a Permanent Memorial; Commission of Control; Maintenance and Operation**

**Commission Authorized to Accept Battleship**

Sec. 1. The "Commission of Control for the Battleship Texas," herein created, shall be and is hereby authorized to accept from the United States Government the Battleship "Texas" for all of the purposes herein specified, and including the establishment of same for exhibition as a permanent memorial for the purpose of commemorating the heroic participation of the State of Texas in the prosecution and victory of the Second World War.

**Commission Created; Membership; Terms**

Sec. 2. There is hereby created a Commission of Control for the Battleship "Texas" to be known as the Battleship Texas Commission and which will hereinafter, in this Act, be referred to as merely the Commission, to be composed of nine (9) members appointed by the Governor

of the State of Texas from the personnel comprising the following organizations, in the number stated:

General Public—Members at large	2 Members
Sons of the Republic of Texas	1 Member
Daughters of the Republic of Texas	1 Member
Texas Historical Association	1 Member
Texas Navy League	1 Member
Disabled Veterans (D.A.V.)	1 Member
American Legion	1 Member
Veterans of Foreign Wars of the U. S.	1 Member

The terms of such members shall be as follows: Three (3) members of said Commission shall be appointed for a term of two (2) years from the effective date of this Act; three (3) members of the Commission shall be appointed for a term of four (4) years from the effective date of this Act; three (3) members of the Commission shall be appointed for a term of six (6) years from the effective date of this Act. All appointees of the Governor shall be confirmed by a two-thirds ( $\frac{2}{3}$ ) vote of the Senate of the State of Texas present.

#### Duties of Commission

Sec. 3. The duties of the Commission shall be: To provide a proper berth for the Battleship "Texas," to select a location adjacent to, or on, the San Jacinto Battlegrounds for such berth; to ready the vessel for visitation by the public; to ascertain and institute a proper charge for admission to said vessel; to maintain and operate said vessel as a permanent memorial and exhibition, and to allocate the money herein appropriated as may be necessary for the fulfillment of the duties contained herein. Said Commission is further authorized to perform all other duties in addition to those specifically named above or mentioned below which are necessary to carry out the provisions and purposes of this Act. The aforesaid Commission shall be and hereby is authorized to accept gifts or donations for the purposes of this Act.

#### Operating Board

Sec. 4. The members of the Commission shall, by a majority vote, appoint three (3) of their number to serve as an Operating Board to the Commission. The Commission may delegate to the Operating Board sufficient authority and power to fulfill, in the name of the Commission, any or all of the duties which are herein conferred upon the Commission.

#### Co-ordinating and Liaison Group

Sec. 5. Inasmuch as the Battleship "Texas" will be berthed adjacent to or within the confines of the present San Jacinto Battlegrounds, the Operating Board, in addition to its other duties, shall act as a co-ordinating and liaison group between the Commission of Control for

the Battleship "Texas" and the present San Jacinto State Park Commission.

Secretary; Meetings; Seal; Cooperation by Board of Control; Repairs; Revenues; Bonds

Sec. 6. The Commission shall select one of its members as Chairman, and shall select a Secretary who may or may not be a member. The Commission shall meet on the first Thursday of each month and at such other times as the Chairman deems necessary, by giving the other members notice in writing thereof. The Commission shall procure and adopt a seal bearing the words "State of Texas Battleship Texas Commission" encircled by the oak and olive branches. The Board of Control is hereby authorized and directed to cooperate with the Commission in the use of the Board's offices and employees in aiding the Commission to carry out its duties.

The Commission shall have the duty of maintaining and keeping in proper repair the Battleship Texas located in San Jacinto State Park, and shall exact fees or charges from persons for the admission to and inspection of said vessel. Said Commission shall have the power to let concession contracts to the highest bidders for the sale of wares or merchandise to visitors in connection with admission to and inspection of said vessel, and such fees and charges and concession revenues shall be used to pay the operation, repair, and maintenance expenses of said vessel. Said Commission shall also have the power and authority to issue negotiable revenue bonds in the name of "State of Texas Battleship Texas Commission" for the purpose of repairing or improving said vessel or for the construction of protective improvements, including the construction of a bulkhead or bulkheads to prevent erosion around the slip wherein said vessel is berthed or located. Said bonds shall be secured by and payable solely from the net revenues derived by the hereinabove mentioned fees and charges and concession contracts. The Commission is hereby given complete discretion in fixing the form, conditions, and details of such bonds, and in entering into covenants relating to the use of the net revenues in connection with said bonds. Said bonds shall not in any manner constitute an indebtedness of the State of Texas or of said Commission, but shall be payable solely from the net revenues as above specified, and each of said bonds shall have words to this effect printed on the face thereof. Any interest or principal falling due during the period of the construction of repairs or improvements or protective work and all costs incident to the issuance and sale of the bonds may be paid from the bond proceeds. Said bonds shall mature serially over a period of years not to exceed forty (40), bear interest at a rate not to exceed three (3%) per cent per annum, be signed by the Chairman of the Commission and countersigned by the Secretary; provided that the interest coupons may bear the facsimile signatures of such officers. Said bonds shall be sold for not less than their par value plus

accrued interest. Said bonds shall be submitted to the Attorney General for examination, and upon approval, shall be registered by the Comptroller of Public Accounts. After such approval and registration and delivery to the purchaser or purchasers, said bonds shall be incontestable. Such bonds and the interest thereon shall be exempt from taxation by the State of Texas or by any municipal corporation, county or political subdivision, or taxing district of the State. While said bonds or any of them are outstanding, the Commission shall fix said fees and charges for admission and inspection and the payments under the concession contracts in an amount as will be ample to produce sufficient net revenues (the revenues remaining from the gross revenues after the payment of all proper expenses of operation and maintenance) to pay all requirements of such bonds and to create, establish, and maintain such reserves as may be specified in the proceedings authorizing the issuance of such bonds. The Commission shall have the power and duty to revise the fees and charges so that the net revenues will at all times be sufficient for the purpose described above. Any bonds issued under this Act may be refunded at the same or a lower rate of interest upon the cancellation by the Comptroller of the bonds being refunded at the time of registration of the refunding bonds, the said refunding bonds to be issued under the terms and conditions of this Act relating to the original bonds.

No net revenues derived from admission or inspection fees and charges or from concession contracts shall be paid into the General Revenue Fund when there are outstanding revenue bonds payable from said net revenues; provided that if there are no such outstanding revenue bonds, then on August 31st of each year while there are no such outstanding bonds, the Commission shall cause to be paid into the State Treasury of the State of Texas for the benefit of the General Revenue Fund all net revenues then on hand in excess of One Hundred Thousand Dollars (\$100,000.00).

#### Books of Account and Records

Sec. 7. The Commission shall maintain books of account and records concerning all revenue derived from the sale of admissions to the public and all expenses incurred in maintaining and operating the Battleship as a public memorial; such records and books shall be available for audit at any time by the Board of Control of the State of Texas.

#### Hiring of Employees

Sec. 8. The Commission is hereby authorized to hire any laborers, artisans, caretakers, stenographic and administrative help as may be necessary to carry out the provisions and purposes of this Act. The Commission may further engage the employment of laborers and artisans and purchase materials necessary to maintain the Battleship "Texas" in a clean, neat and attractive condition satisfactory for exhibition to the public.

#### Employees

Sec. 9. Any employees hired by virtue of the provisions of the above Section of this Act shall be residents of the State of Texas. Any materials used for any purpose in connection with maintaining and operating the Battleship "Texas" shall be, as far as practicable, Texas materials.

#### Expenditures and Contracts

Sec. 10. All expenditures and contracts authorized by the Commission or Operating Board shall be made, let, supervised and expended by the Board of Control of the State of Texas according to all legal requirements as to the expenditures of funds and the letting of contracts by the said Board of Control.

#### Appointments of Members of Commission

Sec. 11. When the term of any of the above appointees expires, the Governor of the State of Texas shall appoint from the personnel of the organization to which the Commission member whose term expired belonged a person to serve on the Battleship Texas Commission; in the event a member of the Commission dies or resigns his position, the Governor of the State of Texas shall appoint a successor from the same organization to which the deceased or resigning member belonged to serve the portion remaining of the unexpired term; all appointments made by the Governor of the State of Texas to replace Commission members whose terms have expired shall be for a term of four (4) years from the date of the expiration of the preceding term; all appointments made by the Governor of the State of Texas to replace Commission members who have died or resigned their positions shall have as their term that portion remaining of the unexpired term of the deceased or resigning member. Such appointees of the Governor shall be confirmed by a two-thirds ( $\frac{2}{3}$ ) vote of the Senate of the State of Texas present.

#### Unlawful Acts; Violations

Sec. 12. It shall be unlawful for any member of the Commission, or of the Operating Board, to charge, receive or obtain, directly or indirectly, any fee, commission, retainer or brokerage out of the funds hereby appropriated; and no member of the Commission or the Operating Board shall have any interest in any land, materials, concessions or contracts sold to or made with either the Commission or the Operating Board. Violation of any of the provisions of this Section shall be a misdemeanor and upon conviction, punishment shall consist of removal from such Commission or Operating Board and by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) or by confinement in the county jail at any time not to exceed six (6) months or by both such fine and imprisonment.

#### Compensation

Sec. 13. No member of the Commission or of the Operating Board shall receive any salary for the performance of his duties under this

Act. No other person employed by virtue of the provisions of this Act shall receive, as salary, commission or compensation, out of the state funds herein appropriated, or from the fund which is to be maintained by the Commission, more than Twelve Thousand Dollars (\$12,000.00) per year.

**Partial Invalidity**

Sec. 14. It is understood and expressly provided that, should any Section, clause, or provision of this Act be hereafter held invalid for any reason, such invalidity shall not, in any way, affect any other provision of this Act.

[Acts 1947, 50th Leg., p. 241, ch. 139; Acts 1951, 52nd Leg., p. 157, ch. 96, § 1; Acts 1959, 56th Leg., p. 762, ch. 343, § 1; Acts 1971, 62nd Leg., p. 1924, ch. 580, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 828, ch. 377, § 1, eff. June 12, 1973.]

**Art. 6145-3. Texas Stonewall Jackson Memorial Board; Memorial Fund; Scholarships**

Sec. 1. There is hereby created the Texas Stonewall Jackson Memorial Board, which shall have as its purpose the memorializing of the great American and Confederate General, "Stonewall" Jackson, through a program of education initiated by Stonewall Jackson Memorial, Inc. The Texas Stonewall Jackson Memorial Board shall be governed by a board of trustees, who shall be composed of three (3) members: the Texas Commissioner of Education, the President of Stonewall Jackson Memorial, Inc., and an appointee of the Governor, by and with the advice and consent of the Senate.

The board of trustees shall be vested with the power to administer this Act in its entirety; to establish the Texas Stonewall Jackson Memorial Fund; to receive and accept appropriations and donations in behalf of said fund; to invest all monies in said fund in such sound securities as they may deem advisable in line with good business procedure; to use the income derived from said fund to initiate and conduct essay contests and provide prizes therefor and to grant scholarships; to prescribe the rules and regulations governing essay contests and the awarding of scholarships from the Texas Stonewall Jackson Memorial Fund.

The benefits of this fund shall accrue only to residents of the State of Texas. The board of trustees shall require, insofar as possible, the repayment of all scholarship funds by the recipients thereof, under such terms as circumstances may justify, and any money so repaid shall become part of the principal of the fund.

Sec. 2. No part of the principal of said fund shall be disbursed for any purpose, and all prizes and grants shall be taken from the interest derived from investments only.

[Acts 1957, 55th Leg., p. 504, ch. 242.]

**Art. 6145-4. Old Galveston Quarter**

**Purpose of Act**

Sec. 1. The purpose of this Act is to implement the Texas constitutional provisions by

preserving and perpetuating as a memorial to the history of Texas one of the most historically significant areas of Texas, being that of Old Galveston.

**Creation of Old Galveston Quarter; Boundaries**

Sec. 2. (a) There is hereby created in the City of Galveston a district to be known as the Old Galveston Quarter, which shall be comprised of all the territory contained within the boundaries described as follows:

BEGINNING  $\frac{1}{2}$  block South of the corner of Broadway and 12th Street, West parallel to Broadway to a point  $\frac{1}{2}$  block South of the corner of 19th and Broadway;

THENCE North to a point  $\frac{1}{2}$  block North of Sealy;

THENCE East to a point  $\frac{1}{2}$  block North of Sealy and 17th Street;

THENCE North to the corner of 17th Street and Market Street;

THENCE East along Market Street to the corner of Market Street and 15th Street;

THENCE North along 15th Street to Avenue A;

THENCE East along Avenue A to the corner of Avenue A and 12th Street;

THENCE South along 12th Street to the place of beginning.

(b) Property contiguous to that described above may come within said District upon petition of the property owners.

**Old Galveston Quarter Commission; Members; Terms; Chairman and Officers**

Sec. 3. (a) The powers of the Old Galveston Quarter shall be exercised by the Old Galveston Quarter Commission consisting of five members all of whom shall be property owners within the Quarter. The Governor shall appoint the five members from a list of ten property owners nominated by the membership of the Old Galveston Quarter Property Owners Association at the annual meeting or a special meeting called for this purpose, provided that all resident property owners within the Quarters are entitled to vote upon these nominations at the meeting. The initial terms of the first five members of the Commission shall be as follows: the Governor shall appoint two for a three year term; two for a two year term; and one for a one year term. Upon the expiration of each of these terms, subsequent appointments shall be filled in a similar manner for a term of three years.

(b) As the term of any such Commissioner, or of any subsequent Commissioner expires, his successor shall be appointed in like manner. Vacancies in the Commission shall be filled in the same manner for the unexpired term. Every Commissioner shall continue in office after the expiration of his term until his successor is duly appointed and has qualified.

(c) The Commission shall elect one of its members as chairman, one as vice-chairman and another as treasurer; and the signed authorization by two shall be necessary for operating expenditures. Members of the Commission shall serve without compensation. The records of the Commission shall set forth every determination made by the Commission and the vote of every member participating therein and the absence or failure to vote of every other member.

**Limitation on Issuance of Building Permit**

Sec. 4. No permit shall be issued by the City of Galveston for the construction of any structure in the Old Galveston Quarter or the reconstruction, alteration or demolition of any structure now or hereafter in said Quarter, except in cases excluded by this Act, unless the application for such permit shall bear a certificate under Section 6 of this Act that no exterior architectural feature is involved or shall be accompanied by a certificate of appropriateness issued under this Act, or in the case of the demolition of a structure, a certificate under this Act that thirty (30) days or such lesser period as the Commission may have determined has expired after receipt by the Commission of notice of demolition.

**Certificate of Nonapplicability of Statute**

Sec. 5. Except in cases excluded by Section 8 of this Act, every person about to apply to the City of Galveston for a permit to construct any structure in the Old Galveston Quarter or to reconstruct, alter or demolish any structure now or hereafter in said Quarter shall deposit with the secretary of the Commission his application for such permit together with all plans and specifications for the work involved. Within fifteen (15) days thereafter, Saturdays, Sundays and legal holidays excluded, the Commission shall consider such application, plans and specifications and determine whether any exterior architectural feature is involved. If the Commission determines that no exterior architectural feature is involved, it shall cause its secretary to endorse on the application forthwith a certificate of such determination and return the application, plans and specifications to the applicant.

**Exterior Architectural or Advertising Features; Certificate of Appropriateness**

Sec. 6. (a) No person shall construct any exterior architectural or advertising feature in the Old Galveston Quarter, or reconstruct or alter any such feature now or hereafter in said Quarter, until such person shall have filed with the Secretary of the Commission an application for a certificate of appropriateness in such form and with such plans, specifications and other material as the Commission may from time to time prescribe and a certificate of appropriateness shall have been issued as hereinafter provided in this Section.

(b) Within fifteen (15) days after the filing of an application for a certificate of appropri-

ateness, Saturdays, Sundays and legal holidays excluded, the Commission shall determine the estates deemed by it to be materially affected by such application and, unless a public hearing on such application is waived in writing by all persons entitled to notice thereof, shall forthwith cause its secretary to give by mail, postage prepaid, to the applicant, to the owners of all such estates as they appear on the then most recent real estate tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, reasonable notice of a public hearing before the Commission on such application.

(c) As soon as conveniently may be after such public hearing or the waiver thereof, but in all events within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after the filing of the application for the certificate of appropriateness, or within such further time as the applicant may in writing allow, the Commission shall determine whether the proposed construction, reconstruction or alteration of the exterior architectural feature involved will be appropriate to the preservation of the Old Galveston Quarter for the purposes of this Act, and whether, notwithstanding that it may be inappropriate, owing to conditions especially affecting the structure involved, but not affecting the Old Galveston Quarter generally, failure to issue a certificate of appropriateness will involve a substantial hardship to the applicant and such a certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this Act. In passing upon appropriateness, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design, arrangement, texture, material and color of the exterior architectural feature involved and the relationship thereof to the exterior architectural features of other structures in the immediate neighborhood.

(d) If the Commission determines that the proposed construction, reconstruction or alteration of the exterior architectural feature involved will be appropriate, or, although inappropriate, owing to conditions as aforesaid, failure to issue a certificate of appropriateness will involve substantial hardship to the applicant and issuance thereof may be made without substantial detriment or derogation as aforesaid, or if the Commission fails to make a determination within the time hereinbefore prescribed, the secretary of the Commission shall forthwith issue to the applicant a certificate of appropriateness. If the Commission determines that a certificate of appropriateness should not issue, the Commission shall forthwith spread upon its records the reasons for such determination and may include recommendations respecting the proposed construction, reconstruction or alteration. Thereupon the secretary of the Commission shall forthwith notify the applicant of such determination,

transmitting to him an attested copy of the reasons and recommendations, if any, spread upon the records of the Commission.

#### Notice of Demolition

Sec. 7. No person shall demolish any exterior architectural feature now or hereafter in the Old Galveston Quarter until he shall have filed with the secretary of the Commission on such form as may be from time to time prescribed by the Commission a written notice of his intent to demolish such feature and a period of thirty (30) days, Saturdays, Sundays and legal holidays excluded, or such lesser period as the Commission, because the feature is not historically or architecturally significant or otherwise worthy of preservation, may in a particular case determine, shall have expired following the filing of such notice of demolition. Upon the expiration of such period the secretary of the Commission shall forthwith issue to the person filing the notice of demolition a certificate of the expiration of such period.

#### Exclusions

Sec. 8. Nothing in this Act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature now or hereafter in the Old Galveston Quarter; nor shall anything in this Act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature which the Commission shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this Act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature under a permit issued by the City of Galveston prior to the effective date of this Act.

#### Appeals

Sec. 9. Any applicant aggrieved by a determination of the Commission may, within thirty (30) days after the making of such determination, appeal to the District Court of Galveston County. The Court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the reasons given by the Commission to be unwarranted by the evidence or to be insufficient in law to warrant the determination of the Commission or make such other decree as justice and equity may require. The remedies provided by this Section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

#### Powers of the Commission

Sec. 10. The Commission may regulate the types and location of business as well as business hours within the Quarter where such regulation does not conflict with any state law or city ordinance and may sell or lease, for periods not to exceed twenty (20) years, real or personal property for use within the Quarter which it may acquire by purchase or gift; pro-

vided that the Commission shall have no power of eminent domain.

#### Bonds

Sec. 11. The Commission shall have no authority to issue bonds.

#### Action for Declaratory Judgment

Sec. 12. The Commission may bring an action for a declaratory judgment in any District Court in Galveston or Travis Counties, Texas, in order to finally determine any question concerning this Statute.

#### Election; Petition; Returns

Sec. 13. (a) The powers granted to the Old Galveston Quarter Commission under this Act shall not take effect until an election has been held within the boundaries of the proposed District, and its creation has been approved by the majority of those voting in an election.

(b) A petition shall first be presented to the Commissioners Court signed by a majority of the resident property owners within the Quarter.

(c) The Commissioners Court shall then order an election to be held within the boundaries of the Old Galveston Quarter at which election shall be submitted the following propositions and none other:

"FOR the Old Galveston Quarter."

"AGAINST the Old Galveston Quarter."

(d) A majority of those voting in the Special Election shall be necessary to carry the proposition. Only resident property owners may vote at such an election. All such elections shall be conducted in the manner provided by the General Election Laws, unless otherwise provided. The Commissioners Court shall name polling places within the Quarter and shall appoint the judges and other necessary election officers.

(e) Immediately after the election each presiding judge shall make returns of the result as provided for in General Elections for state and county officers, and return the ballot boxes to the County Clerk, who shall keep same in a safe place and deliver them together with all returns to the Commissioners Court at its next regular or special session to canvass the vote. If the court finds that the proposition carried, it shall so declare the result and enter the same in its minutes.

[Acts 1962, 57th Leg., 3rd C.S., p. 81, ch. 30; Acts 1963, 58th Leg., p. 1166, ch. 453, §§ 1 to 5, eff. Aug. 23 1963.]

#### Art. 6145-5. Preservation of Gethsemane Church and Carrington-Covert House

Sec. 1. Authority and responsibility for the preservation, for the purposes of this Act, of the structures known as the Gethsemane Church and the Carrington-Covert House and their adjoining grounds, located at Congress and 16th Street on Lots 5, 6, 7, and 8, Outlot 46, Division "E" of the original City of Austin, County of Travis, Texas, and now owned by the State of Texas, shall be vested in the State Historical Survey Committee. All authority and responsibility previously given to the State

Building Commission for the preservation of Gethsemane Church shall be terminated.

Sec. 2. The Historical Survey Committee shall maintain the Gethsemane Church, the Carrington-Covert House and their adjoining grounds in a state of repair suitable for the purposes provided in this Act.

Sec. 3. (a) The Historical Survey Committee shall maintain and develop the Gethsemane Church, Carrington-Covert House and their adjoining grounds for the purpose of beautification and cultural enhancement of these properties as a significant Texas historical site, consistent with development of the capitol complex.

(b) The committee shall exercise its discretion in maintaining and developing these properties in accordance with the purposes of this Act.

Sec. 4. (a) The committee shall spend such money as the Legislature may appropriate for the purposes expressed in this Act.

(b) The committee may accept gifts and donations to the Gethsemane Church, the Carrington-Covert House and their adjoining grounds and use the gifts and donations in accordance with all conditions and instructions of the donor which are consistent with this Act.

[Acts 1965, 59th Leg., p. 303, ch. 136, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2705, ch. 887, § 1, eff. June 21, 1969.]

**Art. 6145-6. State Archeologist; Transfer; Jurisdiction**

Sec. 1. Effective September 1, 1969, the office of the State Archeologist is hereby transferred from the jurisdiction of the State Building Commission to the jurisdiction of the Texas State Historical Survey Committee. All data, reports, supplies, employees, equipment, artifacts and other property used by or pertaining to the office of State Archeologist are hereby transferred from the jurisdiction of the State Building Commission to the jurisdiction of the Texas State Historical Survey Committee.

Sec. 2. The State Archeologist shall have general jurisdiction and supervision over all archeological work, reports, surveys, excavations or archeological programs of the Texas State Historical Survey Committee and of cooperating state agencies. His duties shall include

(a) the maintaining of an inventory of significant sites of archeological and historic interest, whether prehistoric or historic;

(b) public information and education in the field of archeology and history;

(c) conducting surveys and excavations with respect to significant archeological and historic sites in Texas;

(d) preparing reports and publications concerning the work of his office;

(e) cooperative and contract work in prehistoric and historic archeology with

other state agencies, the federal government, state or private institutions, or individuals;

(f) maintaining and determining the repository of catalogued collections of artifacts and other materials of archeological and historic interest; and

(g) preservation of the archeological and historical heritage of Texas.

Sec. 3. The Texas State Historical Survey Committee is hereby empowered to enter into contracts and cooperative agreements with the federal government, other state agencies, state and private museums and educational institutions, and qualified individuals for prehistoric and historic archeological investigations, surveys, excavations and restorations within the State of Texas.

[Acts 1969, 61st Leg., p. 837, ch. 275, eff. Sept. 1, 1969.]

**Art. 6145-7. Texas Conservation Foundation**

Sec. 1. In order to encourage private gifts of real and personal property or any income therefrom or other interest therein, and to make timely acquisition by purchase or option, of any property for the benefit of, or in connection with, the Texas state system of parks, refuges, wildlife preserves, wildlife management areas, and scientific and recreational areas, and thereby to further the conservation of natural, scenic, historical, scientific, educational, inspirational, wildlife, or recreational resources for future generations of Americans, there is hereby established a charitable and nonprofit corporation to be known as the Texas Conservation Foundation to accept and administer such gifts and to otherwise acquire and hold such property or interests therein, provided, however, that nothing herein contained shall confer the right of eminent domain to the Foundation.

Sec. 2. The Texas Conservation Foundation shall consist of a board having as members the executive director of the Parks and Wildlife Department, the chairman of the Parks and Wildlife Commission, the executive director of the Texas State Historical Survey Committee, and nine interested private citizens of the State of Texas appointed by the Governor of Texas, with the advice and consent of two-thirds of the Senate, two of which private citizens must have a generally recognized and special competence in one or more of the following fields: ecology, biology, botany, or private, volunteer, land, water, and wildlife conservation work, including at least one member from statewide conservation groups, and seven other private citizens, each of whom shall have a generally recognized and special competence in one or more of the following fields: investments, real estate transactions and holdings, oil and gas, industry, banking, and general business. The board shall select its chairman from among its membership. The initial terms of the appointed members shall be staggered so that the terms of one-third of these members will expire every two years. Thereafter, the

term of each appointed member shall be six years. The terms of one-third of the appointed members expire on January 31 of each odd-numbered year. The executive director of the Parks and Wildlife Department shall be secretary of the board. Membership on the board shall not be deemed to be an office within the meaning of the statutes and constitution of Texas. A majority of the members of the board serving at any one time shall constitute a quorum for the transaction of business, and the foundation shall have an official seal which shall be judicially recognized. The board shall meet at the call of the chairman and there shall be at least one meeting each year.

Sec. 3. No compensation shall be paid to the members of the board for their services as members, but they shall be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of such Texas Conservation Foundation funds as may be available to the board for such purposes.

Sec. 4. The foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, trusts or bequests, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with the Texas system of parks, refuges, scientific, historical, prehistoric, educational, inspirational, wildlife preservation, wildlife management, or recreational areas and sites. An interest in real property includes, among other things, easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historical, archeological, scientific, educational, inspirational, wildlife, or recreational resources anywhere within the State of Texas. A gift, devise or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interest of private persons or corporations, so long as any current or future use or interest therein is for the benefit of the Texas parks, refuge, and scenic, wildlife preservation, wildlife management, or scientific areas system, and if such beneficial interest is retained, it shall be taxable to the grantor by the State of Texas, or any taxing authority created by the laws thereof, to the extent of the fair market value of the beneficial interest.

Sec. 5. To the extent that funds are available to it for such purpose, the foundation is authorized to enter into and exercise purchase options, and to buy by outright purchase, or to contract for, trade for, or otherwise acquire in the title and name of the foundation any lands or interest therein which the foundation deems significant and necessary for the purposes of the foundation. The foundation, unless specially restricted by the instrument of transfer, may hold such lands or interest therein in undeveloped and protective holdings as the foundation deems necessary for the accomplishment of its statutory purposes.

Sec. 6. Except as otherwise limited or required by the instrument of transfer, the foundation may sell, lease, trade, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof in such manner as the board may from time to time determine. The foundation shall not engage in any business, nor shall the foundation make any investment that may not lawfully be made under the Texas Trust Act, as amended, except that the foundation may make any investment that is authorized by the instrument of transfer and may retain any property accepted by the foundation. The foundation may utilize the services and facilities of the Parks and Wildlife Department, the Texas State Historical Survey Committee, and the office of the attorney general, and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.

Sec. 7. The foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and be sued in its own name, but the members of the board shall not be personally liable, except for malfeasance.

Sec. 8. The foundation shall have the power to enter into contracts in its own name, to act through agents and employees, to execute and acknowledge instruments, and generally to do any and all lawful acts necessary or appropriate to its statutory purposes.

Sec. 9. In carrying out the provisions of this Act, the board may adopt bylaws, rules, and regulations necessary for the administration of its functions and contract for any necessary services.

Sec. 10. The foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all forms of taxation with respect thereto. The foundation may, however, in the discretion of its board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of the foregoing or by virtue of its being charitable and non-profit corporation, and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the foundation shall be regarded as contributions, gifts, or transfers to or for the use of the State of Texas for scientific, educational, and benevolent purposes, and all such transfer shall be without tax to the transferor.

Sec. 11. No property, income, or interest therein which passes to the foundation shall ever thereafter enure to the private benefit or profit of any individual, firm, or corporation.

Sec. 12. The State of Texas shall not be liable for any debts, defaults, acts, or omissions of the foundation.

Sec. 13. The foundation shall, as soon as practicable after the end of each fiscal year, transmit to the legislature and the governor an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

[Acts 1969, 61st Leg., p. 2400, ch. 807, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 698, ch. 295, § 1, eff. Aug. 27, 1973.]

**Art. 6145-8. American Revolution Bicentennial Commission**

**American Revolution Bicentennial Commission—  
Creation—Members**

Sec. 1. A. There is created the "American Revolution Bicentennial Commission (of Texas)," composed of:

(1) The Secretary of State, the Attorney General, (who shall also act as attorney for the commission), each of whom shall serve ex officio; and

(2) seven citizens of the state appointed by the governor, one of whom shall be designated by the governor as chairman of the commission.

Two of the original appointments by the governor shall be for a term of six years, two for four years, and three for two years; and the governor shall designate the terms of each. Their successors shall each be appointed for a term of six years or till the expiration of this Act.

B. Members of the commission shall be reimbursed for mileage and per diem only, and shall receive no other compensation, perquisite or allowance. The mileage shall be the same as allowed to members of the Legislature, to wit, ten cents per mile, to and from the place of meeting and their respective places of residence. The per diem shall be Twenty-five Dollars per day or fraction thereof.

C. The Secretary of State shall serve as secretary of the commission.

**Powers and Duties**

Sec. 2. A. The commission shall prepare an overall program for commemorating the Bicentennial of the American Revolution in Texas and plan, encourage, develop and coordinate observances and activities commemorating the historic events that preceded and are associated with the American Revolution.

B. In preparing its plans and program, the commission shall consider any related plans and programs developed by the national American Revolution Bicentennial Commission and local and private groups, and it may designate special committees with representatives from such bodies to plan, develop and coordinate specific activities.

C. In all planning, the commission shall give special emphasis to the ideas associated with the American Revolution which have been so important in the development of the United States, in world affairs and in mankind's quest for freedom.

D. The commission shall submit to the governor a comprehensive report incorporating its specific recommendations for the commemoration of the American Revolution bicentennial and related events. This report may recommend activities such as, but not limited to:

(1) the production, publication and distribution of books, pamphlets, films and other educational materials on the history, culture and political thought of the period of the American Revolution;

(2) bibliographical and documentary projects and publications;

(3) conferences, convocations, lectures, seminars and other programs;

(4) the development of libraries, museums, historic sites and exhibits pertaining to the American Revolution; including mobile exhibits;

(5) ceremonies and celebrations commemorating specific events; and

(6) programs and activities on the national and international significance of the American Revolution and its implications for present and future generations.

E. The report of the commission shall include recommendations for the allocation of financial and administrative responsibility among the public and private authorities and organizations recommended for participation by the commission. The report shall also include proposals for legislation and administrative action the commission considers necessary to carry out its recommendations. The governor shall transmit the commission's report to the Legislature, together with any comments and recommendations for legislation, and a report of administrative actions taken by him.

**Cooperation**

Sec. 3. A. In fulfilling its responsibilities, the commission shall consult, cooperate with and seek advice from appropriate state departments and agencies, local public bodies, learned societies and historical, patriotic, philanthropic, civic, professional and related organizations. State departments and agencies may cooperate with the commission in planning, encouraging, developing and coordinating appropriate commemorative activities.

B. The historical sites committee shall determine if there are any sites within the state which are appropriate for preservation or development in commemoration of the American Revolution in a manner to insure that fitting observances and exhibits may be held at the sites during the bicentennial celebration. The historical sites committee shall submit the results of its study to the commission in time to afford the commission an opportunity to review the study and to incorporate appropriate findings and recommendations in its report to the governor.

C. The president of each state university, school or college, shall cooperate with the commission, especially in the encouragement, coor-

dination and publicity of scholarly works and presentations on the history, culture, political thought and commemoration of the American Revolution.

D. The state librarian, and other state departments and institutions shall cooperate with the commission, especially in the development of bibliographies, catalogs and other materials relevant to the period of the American Revolution.

Acceptance of Donations—Disposition of Property—  
Appropriation

Sec. 4. A. There is created hereby the "Bicentennial Fund" and there is appropriated hereby into such fund from the General Fund the sum of Twenty-five Thousand Dollars to such commission to carry out the provisions of this Act.

B. The commission may accept donations of money, personal property or personal services.

C. All property acquired by the commission shall be deposited for preservation in federal, state or local libraries or museums or otherwise disposed of in consultation with the state librarian, and/or other state departments or institutions.

D. All money donated to the commission shall be deposited with the state treasurer into the "Bicentennial Fund" and is appropriated to the commission. All payments made from the "Bicentennial Fund" shall be approved by the Chairman of the commission, and be by state warrants drawn on such fund in the usual manner and form.

Staff

Sec. 5. The commission may employ and fix the compensation and duties of necessary personnel.

Annual Reports

Sec. 6. The commission shall submit to the governor, an annual report of all activities, including an accounting of all property and money received and disbursed.

Termination

Sec. 7. The commission is abolished as of June 1, 1978.

[Acts 1969, 61st Leg., p. 2620, ch. 868, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 644, ch. 273, § 1, eff. June 11, 1973.]

**Art. 6145-9. Antiquities Code**

Short Title

Sec. 1. This Act shall be known, and may be cited, as the "Antiquities Code of Texas."

Policy

Sec. 2. It is hereby declared to be the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archeological, educational, or scientific interest, including but not limited to prehistoric and historical American Indian or aboriginal camp-

sites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part or the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, natural history, government, or culture in, on or under any of the lands in the State of Texas, including the tidelands, submerged lands, and the bed of the sea within the jurisdiction of the State of Texas.

Antiquities Committee

Sec. 3. There is hereby created a committee known as the Antiquities Committee, to be composed of seven (7) members, namely: The Director of the State Historical Survey Committee, the Director of the State Parks and Wildlife Department, the Commissioner of the General Land Office, the State Archeologist, and the following citizen members, to-wit: one professional archeologist from a recognized museum or institution of higher learning in Texas, one professional historian with expertise in Texas history and culture, and the Director of the Texas Memorial Museum of The University of Texas; each citizen member to be a resident of the State of Texas and to be appointed by the Governor with the advice and consent of the Senate, who shall serve for a term coexistent with the Governor appointing him and until his successor shall have been appointed and qualified. Each citizen member of the Antiquities Committee is entitled to receive a per diem allowance for each day spent in performance of his duties and reimbursement for actual and necessary travel expenses incurred in the performance of his duties, as provided by the General Appropriations Act. The Antiquities Committee shall select one of its members as the Chairman. The Antiquities Committee may employ such personnel as are necessary to perform the duties imposed upon such Committee, to the extent such employment is provided for by the General Appropriations Act.

Employees of the Antiquities Committee shall be deemed to be employees of the Texas State Historical Survey Committee. The Antiquities Committee shall keep a record of its proceedings which shall be subject to inspection by any citizen of Texas desiring to make an examination in the presence of a member of the Antiquities Committee or an authorized employee of such Antiquities Committee. Four members of the Antiquities Committee shall constitute a quorum for the conducting of business.

Duties of Committee

Sec. 4. The duties of the Antiquities Committee shall be to determine the site of, and to designate, State Archeological Landmarks and to remove from such designation certain of such sites as hereinafter provided, to contract or otherwise provide for the discovery and salvage operation herein covered and to consider

the requests for, and issue the permits hereinafter provided for, and to protect and preserve the archeological resources of Texas. The Antiquities Committee shall be the legal custodian of all items hereinafter described which have been recovered and retained by the State of Texas and shall maintain an inventory of such items showing the description and depository thereof.

Display of Artifacts

Sec. 4A. Insofar as it is consistent with the public policy as expressed in this Act, the Antiquities Committee, upon a majority vote, may arrange or contract with other state agencies or institutions, with incorporated cities, and with qualified private institutions, corporations, or individuals for the public display of artifacts and other items in its custody through permanent exhibits established in the locality or region in which they were discovered or recovered, as the case may be.

The Antiquities Committee upon a majority vote, may arrange or contract with other state agencies or institutions, with incorporated cities, and with qualified private institutions, corporations, or individuals for portable or mobile displays.

In either case, the Antiquities Committee shall be the legal custodian of all items described elsewhere in this Act, and shall make appropriate rules, regulations, terms, and conditions to assure appropriate security, qualification of personnel, insurance, facilities for preservation, restoration, and display of all items loaned under such contracts.

Sunken Ships; State Archeological Landmarks

Sec. 5. All sunken or abandoned pre-twentieth century ships and wrecks of the sea and any part or the contents thereof and all treasure imbedded in the earth, located in, on or under the surface of lands belonging to the State of Texas, including its tidelands, submerged lands and the beds of its rivers and the sea within the jurisdiction of the State of Texas are hereby declared to be State Archeological Landmarks and are the sole property of the State of Texas and may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit of the Antiquities Committee.

Other Sites, Artifacts, Etc.; State Archeological Landmarks

Sec. 6. All other sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including but expressly not limited to, those pertaining to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on or under the surface of any lands belonging to the State of Texas or by any county, city, or political subdivision of the state are hereby declared to be State Archeological

Landmarks and are the sole property of the State of Texas and all such sites or items located on private lands within the State of Texas in areas that have been designated as a "State Archeological Landmark" as hereinafter provided, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from, or in violation of the terms of such permit of, the Antiquities Committee.

Sites on Private Lands; Designation as State Archeological Landmarks

Sec. 7. Any site located upon private lands which is determined by majority vote of the Antiquities Committee to be of sufficient archeological, scientific or historical significance to scientific study, interest or public representation of the aboriginal or historical past of Texas may be designated by the Antiquities Committee as a "State Archeological Landmark." It is specifically provided, however, that no such site shall be so designated upon private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located upon the ground. Upon such designation the consent of the landowner shall be recorded in the deed records of the county in which the land is located. Any such site upon private land shall be marked by at least one marker bearing the words "State Archeological Landmark" for each five (5) acres of area.

Removal of Designation as Landmark

Sec. 8. Upon majority vote of the Antiquities Committee any State Archeological Landmark, on public or private land, may be determined to be of no further historical, archeological, educational, or scientific value or not of sufficient value to warrant its further classification as such; and upon such determination it may be removed from such designation and in the case of sites located on private land that have theretofore been designated by instrument of record, the Antiquities Committee is authorized to cause to be executed and recorded in the deed records of the county where such site is located an instrument setting out such determination and releasing the site from the provisions hereof.

Contracts for Salvage, Etc.; Approval; Title of State; Recording

Sec. 9. The Antiquities Committee shall be authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, corporations, or individuals for the discovery and salvage of treasure imbedded in the earth, sunken or abandoned ships or wrecks of the sea, parts thereof and their contents. Such contracts to be on forms approved by the Attorney General. The contracts may provide for fair compensation to the salvager in terms of a percentage of the reasonable cash value of the objects recovered, or at the discretion of the Antiquities Committee, of a fair share of the objects recovered; the amount constituting a fair share to be determined by the Antiquities Committee taking

into consideration the circumstances of each such operation, and the reasonable cash value may be determined by contract provision providing for appraisal by qualified experts or by representatives of the contracting parties and their representative or representatives. Such contract shall provide for the termination of any right in the salvager or permittee thereunder upon the violation of any of the terms thereof. Superior title to all objects recovered to be retained by the State of Texas unless and until they are released to the salvager or permittee by the Antiquities Committee. No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract. All such contracts and permits shall specifically provide for the location, nature of the activity, and the time period covered thereby, and when executed are to be recorded by the person, firm, or corporation obtaining such contract in the office of the County Clerk in the county or counties where such operations are to be conducted prior to the commencement of such operation.

#### Permits

Sec. 10. The Antiquities Committee shall be authorized to issue permits to other state agencies or institutions and to qualified private institutions, companies, or individuals for the taking, salvaging, excavating, restoring, or the conducting of scientific or educational studies at, in, or on State Archeological Landmarks as in the opinion of the Antiquities Committee would be in the best interest of the State of Texas. Such permits may provide for the retaining by the permittee of a portion of any recovery as set out for contracting parties under Section 9 hereof. Such permit shall provide for the termination of any rights in the permittee thereunder upon the violation of any of the terms thereof and to be drafted in compliance with forms approved by the Attorney General. All such permits shall specifically provide for the location, nature of the activity, and time period covered thereby. No person, firm, or corporation shall conduct any such operations on any State Archeological Landmark herein described without first obtaining and having in his or its possession such permit at the site of such operation, or conduct such operations in violation of the provisions of such permit.

#### Supervision of Committee; Custodian of Antiquities; Rules and Regulations

Sec. 11. All salvage or recovery operations described under Section 9 hereof and all operations conducted under permits or contracts set out in Section 10 hereof must be carried out under the general supervision of the Antiquities Committee and in accordance with reasonable rules and regulations adopted by the Antiquities Committee and in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items. The Antiquities

Committee shall be the legal custodian of all antiquities recovered, and is specifically authorized and empowered to promulgate such rules and regulations and to require such contract or permit conditions as to reasonably affect the purposes of this Act.

#### Purchase of Antiquities; Gifts, Grants, Devises and Bequests; Contracts for Temporary Possession; Recovery; Public Viewing; Removal From State

Sec. 12. The Antiquities Committee is hereby authorized to expend such sums, from any appropriations hereafter made for such purposes, as it may deem advisable to purchase from the salvager or permittee of such salvager's or permittee's share, or portion thereof, of items recovered which in the opinion of the Antiquities Committee should remain the property of the State of Texas. The Antiquities Committee is authorized and empowered to accept gifts, grants, devises, and bequests of money, securities, or property to be used in the purchase of such items from the salvager or permittee. Further, in this respect, the Antiquities Committee may enter into contracts or agreements with such persons, firms, corporations, or institutions, as it might choose, whereby such persons, firms, corporations, or institutions, for the privilege of retaining temporary possession of such items, may advance to the Antiquities Committee the money necessary to procure from the salvager or permittee such items as the Antiquities Committee might determine should remain the property of the State of Texas upon the condition that at any time the Antiquities Committee may choose to repay to such person, firm, corporation, or institution such sum so advanced, without interest or additional charge of any kind, it may do so and may recover possession of such items; and provided, further, that during the time the said items are in the possession of the person, firm, corporation, or institution advancing the money for the purchase thereof they shall be available for viewing by the general public without charge or at no more than a nominal admission fee, and that such items may not be removed from the State of Texas except upon the express authorization of the Antiquities Committee for appraisal, exhibition, or restorative purposes.

#### Restoration of Antiquities for Private Parties

Sec. 13. The restoration of antiquities for private parties is authorized and shall be under the rules and regulations promulgated by the Antiquities Committee, and all costs incurred in such restoration, both real and administrative, shall be paid by the private party.

#### Fraudulent Reproductions

Sec. 14. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 2(f).

#### American Indian or Aboriginal Hieroglyphics, Etc.; Defacing

Sec. 15. No person shall intentionally and knowingly deface any American Indian or aboriginal paintings, hieroglyphics, or other marks

or carvings on rock or elsewhere which pertain to early American Indian or aboriginal habitation of the country.

**Entering Upon Private Lands for Excavation, Etc.**

Sec. 16. No person, not being the owner thereof, and without the consent of the owner, proprietor, lessee, or person in charge thereof, shall enter or attempt to enter upon the enclosed lands of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on or under any private lands within the State of Texas.

**Violations of Act; Penalties**

Sec. 17. Any person violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50.00) and not more than One Thousand Dollars (\$1,000.00) or by confinement in jail for not more than thirty (30) days, or by both such fine and confinement. Each day of continued violation of any provision of this Act shall constitute a distinct and separate offense for which the offender may be punished.

**Injunctive Relief; Actions by Attorney General and by Citizens; Venue**

Sec. 18. In addition to, and without limiting the other powers of the Attorney General of the State of Texas, and without altering or waiving any criminal penalty provision of this Act, the Attorney General of the State of Texas shall have the power to bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this Act, and for the return of items taken in violation of the provisions hereof, and the venue of such actions shall lie either in Travis County or in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken. Any citizen in the State of Texas shall have the power to bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of the Act, and for the return of items taken in violation of the provisions hereof, and the venue of such actions shall lie in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

**Cooperation of State Agencies and Law Enforcement Officers**

Sec. 19. The chief administrative officers of all state agencies are authorized and directed to cooperate and assist the Antiquities Committee and the Attorney General in carrying out the intent of this Act. All law enforcement agencies and officers, state and local, are

authorized and directed to assist in enforcing this Act and in carrying out the intent hereof.

**Unlawful Acts**

Sec. 20. It shall be unlawful for any person, not being the owner thereof, and without lawful authority, to wilfully injure, disfigure, remove or destroy any historical structure, monument, marker, medallion, or artifact.

**Severability**

Sec. 21. The Sections of this Act and each provision and part thereof are hereby declared to be severable and independent of each other, and the holding of a Section, or part thereof, or the application thereof to any person or circumstance, to be invalid, ineffective or unconstitutional shall not affect any other Section, provision or part thereof, or the application of any Section, provision, or part thereof, to any other person and circumstance.

**Repealers**

Sec. 22. All laws in conflict herewith and laws codified as Chapter 32, Acts of the 42nd Legislature, 1st Called Session, 1931 (Article 147a, Vernon's Texas Penal Code); Chapter 1, General Laws, page 60, Acts of the 46th Legislature, Regular Session, 1939 (Article 147b, Vernon's Texas Penal Code); Chapter 153, Acts of the 58th Legislature, 1963 (Article 147b-1, Vernon's Texas Penal Code); Chapter 193, Acts of the 58th Legislature, 1963 (Article 147b-2, Vernon's Texas Penal Code), are hereby repealed.

[Acts 1969, 61st Leg., 2nd C.S., p. 98, ch. 2, eff. Sept. 10, 1969; Acts 1971, 62nd Leg., p. 1167, ch. 272, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 995, ch. 399, § 2(f).]

**Art. 6145-10. Historical Resources Development Council**

Sec. 1. In order to encourage the best utilization of the unique historical resources of this state, there is hereby created the Texas Historical Resources Development Council.

Sec. 2. The council shall consist of the following ex officio members: the executive director of the Texas State Historical Survey Committee,<sup>1</sup> the director and librarian of the Texas State Library, the executive director of the Texas Tourist Development Agency, the director of the Travel and Information Division of the State Highway Department, the director of the Park Services Division of the Parks and Wildlife Department, and the chairman of the State Antiquities Committee. Membership on the council shall not be deemed to be an office within the meaning of the statutes and Constitution of the State of Texas. A majority of the members of the council shall constitute a quorum authorized to transact business of the council.

<sup>1</sup> Name changed to Texas Historical Commission; see article 6145, § 1a.

Sec. 3. The executive director of the Texas State Historical Survey Committee shall be the chairman of the council, and the director and librarian of the Texas State Library shall be the secretary.

Sec. 4. (a) The council shall establish communication between the Texas State Historical Survey Committee, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Highway Department, the Parks and Wildlife Department, and the State Antiquities Committee in order to coordinate the efforts by these agencies to develop and publicize the historical resources of this state.

(b) The council shall make a continuous study of the means which state agencies and private promotional and historical organizations in Texas employ to develop and publicize the historical resources of this state.

(c) The council shall solicit and consider suggestions from state officials, interested private citizens, and private promotional and historical organizations in Texas for improving the methods employed to develop and publicize the historical resources of this state.

(d) The council shall formulate recommendations for effective methods which may be used by state agencies and private promotional and historical organizations in Texas to develop and publicize the historical resources of this state.

(e) The council shall submit a complete and detailed report twice each calendar year to the governor and to the executive director of the Texas Legislative Council of all proceedings, findings, and recommendations of the Texas Historical Resources Development Council since its last preceding report.

(f) The council shall meet at least four times a year. Additional meetings may be held upon the call of the chairman or upon the written request of any two members of the council.

(g) The council may utilize the services and facilities of the Texas State Historical Survey Committee, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Highway Department, the Parks and Wildlife Department, and the State Antiquities Committee, and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.

Sec. 5. No compensation shall be paid to the members of the council for their services as members.

[Acts 1971, 62nd Leg., p. 1730, ch. 502, eff. Aug. 30, 1971.]

## TITLE 106A

### PASSENGER ELEVATORS

#### Article

6145a. Safety Devices.

6145b. Approval of Industrial Board.

6145c. Safety Devices.

#### Art. 6145a. Safety Devices

It shall be unlawful, after the 1st day of January, 1926, to operate passenger elevators for the carriage of passengers in any building within this State, until the same shall be equipped with a device that will prevent moving said elevator when the gate or door thereto is open; provided, however, that the installation of any such device, the design of which shall have been approved either by the United States Bureau of Standards, or by the Industrial Accident Board of the State of Texas, shall be prima facie evidence of a compliance with this Act.

[Acts 1925, 39th Leg., ch. 29, p. 147, § 1.]

#### Art. 6145b. Approval of Industrial Board

It is hereby made the duty of the Industrial Accident Board to inspect and approve or dis-

approve the model, drawing, or design of any such devices as may be submitted to it in Austin, Texas, and to charge therefor a fee of \$10.00.

[Acts 1925, 39th Leg., ch. 29, p. 147, § 2.]

#### Art. 6145c. Safety Devices

Any person, or the members of any partnership, owning, leasing or in charge or control of any building or edifice operating passenger elevators, and the board of directors, president, general manager, or other agent or employé of any corporation, or any trustee or receiver of such corporation, which is the owner, lessee, or in charge of any such building or edifice operating passenger elevators therein, who shall violate the provisions of this Act shall each be guilty of a misdemeanor, and upon conviction shall be fined not less than five (\$5) dollars nor more than twenty-five (\$25) dollars, and each day such elevator is operated without such device shall constitute a separate offense.

[Acts 1925, 39th Leg., ch. 29, p. 147, § 3.]

## TITLE 107

# PAWNBROKERS AND LOAN BROKERS [Repealed]

	Former article and section	New Article
<b>1. PAWNBROKERS</b>		
Arts. 6146 to 6161. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967	6165b, § 1 -----	
	6165b, § 2 -----	
	6165b, § 3 -----	5069-2.01
	6165b, § 4 -----	5069-2.02
	6165b, § 5 -----	5069-3.01
	6165b, § 7 -----	5069-3.02
	6165b, § 8 -----	5069-3.03
	6165b, § 9 -----	5069-3.05
	6165b, § 10 -----	5069-3.06
	6165b, § 11 -----	5069-3.07
	6165b, § 12(a) -----	5069-3.08
	6165b, § 12(b) -----	5069-3.09
	6165b, § 12(c)-(g) -----	5069-2.03
	6165b, § 13(a) -----	5069-3.10
	6165b, § 13(b) -----	5069-3.11
	6165b, § 14 -----	5069-3.12
	6165b, § 15 -----	5069-3.13
	6165b, § 16 -----	5069-3.14
	6165b, § 17(a) -----	5069-3.15
	6165b, § 17(b) -----	5069-3.16
	6165b, § 18 -----	5069-3.18
	6165b, § 19 -----	5069-3.19
	6165b, § 20 -----	5069-3.20
	6165b, § 21 -----	5069-3.21
	6165b, § 22 -----	5069-3.20
	6165b, § 23 -----	5069-2.04
<b>2. LOAN BROKERS</b>		
Arts. 6162 to 6165. Superseded		
Art. 6165a. Repealed by Acts 1963, 58th Leg., p. 550, ch. 205, § 30, eff. Aug. 23, 1963		
<b>3. TEXAS REGULATORY LOAN ACT</b>		
Art. 6165b. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967		
<b>DISPOSITION TABLE</b>		
Showing where provisions of the Texas Regu- latory Loan Act, former article 6165b, are now covered in article 5069-1.01 et seq., as enacted by Acts 1967, 60th Leg., p. 608, ch. 274.		

# TITLE 108

## PENITENTIARIES

### 1. DEPARTMENT OF CORRECTIONS

- Article**
6166. Repealed.
- 6166a. Department of Corrections; Policy.
- 6166a-1. Names Changed to Texas Department of Corrections, etc.
- 6166b. Texas Board of Corrections.
- 6166c. Pay of Members.
- 6166d. Meetings.
- 6166e. Organization.
- 6166f. Removal or Suspension of Members.
- 6166g. Control of Department of Corrections.
- 6166g-1. Power of Eminent Domain.
- 6166h. Director's Reports.
- 6166i. Suits by Board.
- 6166j. Director's Authority and Pay.
- 6166k. Director's Removal.
- 6166l. Director's Accounts.
- 6166m. Remittances to State Treasurer.
- 6166m-1. Discharged Convicts Revolving Fund Created.
- 6166m-2. Weekly Reports by Depositories to State Treasurer.
- 6166n. Competitive Bids for Contracts.
- 6166o. Sale of Prison Products.
- 6166p. Bonds of Director and Others.
- 6166q. Repealed.
- 6166r. Transportation of Prisoners.
- 6166s. Director and Members of Board to Administer Oaths.
- 6166t. Food for Prisoners.
- 6166u. Separation of Female Prisoners.
- 6166v. Commutation for Good Conduct.
- 6166w. Clothing.
- 6166x. Labor of Prisoners.
- 6166x-1. Labor of Prisoners; Overtime Allowance.
- 6166x-2. Convict Labor on Sam Houston State College Campus.
- 6166x-3. Work Furloughs.
- 6166y. Prisoners' Money.
- 6166z. Reports of Death.
- 6166z1. Discharge.
- 6166z2. Visitors Admitted.
- 6166z3. Rewards on Escape.
- 6166z4. Guards and Other Officers.
- 6166z5. Gambling Forbidden.
- 6166z6. Seal of Board.
- 6166z7. Board of Prison Commissioners Abolished.
- 6166z8. Sale of Prison Made Goods.
- 6166z9. Salaries of Employés of State Penitentiary.
- 6166z10. Liability Insurance of Persons Operating Motor Vehicles and Aircraft Used by Department of Corrections.
- 6167 to 6180. Repealed.

### 2. REGULATIONS AND DISCIPLINE

- 6181 to 6184. Repealed.
- 6184a. Prison Trusties.
- 6184b. Appointment.
- 6184c. Repeaters Not to be.
- 6184d. Convicts Charged With Other Offenses Not to be.
- 6184e. Trusties to Leave Prison When.
- 6184f. Violations of Trust.
- 6184g. Absence of Trusties From Prison.
- 6184h. Prisoner Attempting Escape With Firearm Not to be Trusty.
- 6184i. Not to Apply to Honor Farms.
- 6184j. Exemptions.

### Article

- 6184k. Failure to Enforce.
- 6184k-1. Supervisory or Disciplinary Authority of Inmates.
- 6184l. Commutation for Good Conduct.
- 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment.
- 6185 to 6203. Repealed.
- 6203a. Lease of Prison Lands for Oil and Gas.
- 6203aa. Permits for Geological Surveys.
- 6203b. Schooling for State Convicts.
- 6203b-1. Schools in Penitentiaries and Penitentiary Farms; Compulsory Attendance.
- 6203b-2. Repealed.
- 6203c. Improvement of Department of Corrections.
- 6203c-1. Contracts for Construction and Paving Roads in and Adjacent to Department of Corrections' Lands.
- 6203d. Rights-of-Way for Public Highways, Roads, Streets, Ditches, Irrigation Canals, Electric Lines and Pipe Lines Over Penitentiary System Lands.
- 6203d-1. Deposit of Revenues Derived from Easements; Damages to Property.
- 6203e. State Prison Psychopathic Hospital Established and Maintenance Provided.
- 6203f. Encouraging Cotton Farmers to Purchase Planting Seed From Department of Corrections System.
- 6203g. Agreement Authorized for Penitentiary System to Produce and Sell Farm Products to State Institutions.

### 1. DEPARTMENT OF CORRECTIONS

#### Change of Names

*The name of the Texas Prison System was changed to the Texas Department of Corrections, the name of the Texas Prison Board was changed to the Texas Board of Corrections, and the title of General Manager of the Texas Prison System was changed to Director of Corrections, by Acts 1957, 55th Leg., p. 326, ch. 146. See article 6166a-1.*

**Art. 6166. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1**

**Art. 6166a. Department of Corrections; Policy**

It shall be the policy of this State, in the operation and management of the Prison System,<sup>1</sup> to so manage and conduct the same in that manner as will be consistent with the operation of a modern prison system, and with the view of making the System self-sustaining; and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation. All prisoners shall be worked within the prison walls and upon farms owned or leased by the State; and in no event

shall the labor of a prisoner be sold to any contractor or lessee to work on farms, or elsewhere, nor shall any prisoner be worked on any farm or otherwise, upon shares, except such farm be owned or leased by the State of Texas.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 2.]

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166a-1. Names Changed to Texas Department of Corrections, etc.

Sec. 1. The name of the Texas Prison System is hereby changed to the Texas Department of Corrections. The name of the Texas Prison Board created by Chapter 212, Acts of the 40th Legislature, Regular Session, 1927,<sup>1</sup> is hereby changed to the Texas Board of Corrections, and the title of General Manager of the Texas Prison System is changed to Director of Corrections.

Sec. 2. The only purpose of this Act is to change the names and titles as provided in Section 1. Wherever the terms "Texas Prison System," "Texas Prison Board," and "General Manager of the Texas Prison System," or any reference thereto, appear in the statutes of Texas, such terms and such references shall hereafter mean and apply to the Texas Department of Corrections, the Texas Board of Corrections, and the Director of Corrections, respectively, in order to conform to the new names and titles as provided in Section 1.

[Acts 1957, 55th Leg., p. 326, ch. 146.]

<sup>1</sup> Article 6166b.

#### Art. 6166b. Texas Board of Corrections

There is hereby created the Texas Prison Board,<sup>1</sup> which shall be composed of nine members to be appointed by the Governor with the advice and consent of the Senate, such appointments shall be made bi-annually, or on or before February 15. Each member of said Board shall be a State officer within the meaning of the Constitution, and before entering upon the discharge of his duties shall take the constitutional oath of office. The term of office of each member shall be six years, except that in making the first appointments the Governor shall appoint three members for a term of two years each, three members for terms of four years each, and three members for terms of six years each, so that the terms of three members shall expire every two years. Vacancies occurring in the Board shall be filled by appointment of the Governor for the unexpired term.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 3.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166c. Pay of Members

The members of the Texas Prison Board<sup>1</sup> shall draw no salaries, but each member of the Board shall be entitled to a per diem of ten dollars per day and actual and necessary ex-

penses when engaged in the discharge of his official duties.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 4.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166d. Meetings

The Texas Prison Board<sup>1</sup> shall hold a regular meeting on the second Monday in January, March, May, July, September and November of each year for the transaction of any and all official business. Special meetings of said Board may be called by the Chairman, and upon the petition of five members special meetings of said Board shall be called. Each member of the Board shall be given notice of special meetings and of the purpose thereof, and unless such notice has been given no official business shall be transacted at any special meeting. Six members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 5; Acts 1951, 52nd Leg., p. 773, ch. 424, § 1.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166e. Organization

The Board shall organize by the election of a Chairman and a Vice-chairman from among its members, and shall provide for the appointment of such committees as may be expedient to the accomplishment of the duties of said Board. The Board shall have authority to employ such clerical assistance as may be necessary for the discharge of its duties.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 6.]

#### Art. 6166f. Removal or Suspension of Members

If any member of the Board shall be guilty of malfeasance, misfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties or shall willfully fail, refuse or neglect the discharge of the duties of his office, such member may be removed from office in either of the following ways:

(1) By the Governor in the manner provided by law.

(2) By suit brought by the Attorney General in the name of the State on his own motion or at the direction of the Governor on the relation of the Governor, in the District Court of Travis County or in the District Court of the county of residence of such member. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing that the member is subject to removal as provided herein. Upon the application of the Attorney General in the name of the State of Texas, the District Judge before whom such suit is pending may immediately suspend the member from office, and such order of suspension shall be effective until set aside

by the Court on motion. Such motion, when filed, shall have preference over all other causes pending in such Court. If the judgment of the Court be one of removal from office, the member shall be forthwith suspended from office pending any appeal of the case. When the member is so suspended, the District Judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the suspended member, and such appointee shall receive the same compensation as a member of the Board. The suit shall be a civil action, to be tried as other civil cases, with the right of appeal and review as in other cases. The Court shall have authority to issue all necessary writs to enforce its judgment or order of suspension and to protect its jurisdiction over each case. Such suit shall have precedence over all other cases in the trial and appellate courts.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 7.]

#### Art. 6166g. Control of Department of Corrections

The Texas Prison Board,<sup>1</sup> together with the manager<sup>2</sup> hereinafter provided for, shall be vested with the exclusive management and control of the Prison System,<sup>3</sup> and all properties belonging thereto, subject only to the limitations of this Act,<sup>4</sup> and shall be responsible for the management of the affairs of the Prison System and for the proper care, treatment, feeding, clothing and management of the prisoners confined therein.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 8.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

<sup>3</sup> Changed to Department of Corrections. See art. 6166a-1.

<sup>4</sup> Articles 6166a to 6166z7.

#### Art. 6166g-1. Power of Eminent Domain

The Texas Board of Corrections has the power of eminent domain for the purpose of condemning and acquiring land necessary to eliminate security hazards, protect the life and property of citizens of Texas, and improve the efficiency, management, and operations of the Texas Department of Corrections. The exercise of the power by the board is governed by the rules of Title 52, Revised Civil Statutes of Texas, 1925.<sup>1</sup>

[Acts 1965, 59th Leg., p. 294, ch. 127, § 1, eff. Aug. 30, 1965.]

<sup>1</sup> Article 3264 et seq.

#### Art. 6166h. Director's Reports

The Texas Prison Board<sup>1</sup> shall cause the manager<sup>2</sup> hereinafter provided for to make full and complete reports to each regular meeting of said Board of the fiscal affairs of said Prison System<sup>3</sup> and of the general conditions with relation thereto. On the first day of January of each year, said Board shall cause a full and complete inventory of all property of every de-

scription belonging to the Prison System to be made, and there shall be set opposite each item the book and actual market value of same. Said inventory shall further include a statement of the fiscal affairs of said System as of the first day of January; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 9.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

<sup>3</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166i. Suits by Board

The Texas Prison Board<sup>1</sup> is authorized to bring and maintain suits for the collection and enforcement of all demands and debts owing to the prison system. The venue of such suits shall be in Travis County, and such suits shall be instituted and prosecuted by the Attorney General. No bond for costs, appeal bond, supersedeas bond, writ of error bond, or other security shall at any time be required of the Texas Prison Board in any civil suit of any kind brought by or against it or them in its or their official capacity as such Board or members thereon, except such suits as may be brought against it or them by the State of Texas. Nothing in this section shall authorize any civil suit of any kind whatsoever to be brought or prosecuted against said Board or any member thereof as such, except by way of offset or counter claim to an action originally brought by said Board.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 10.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166j. Director's Authority and Pay

The Texas Prison Board<sup>1</sup> shall employ a general manager of the prison system,<sup>2</sup> who shall possess qualifications and training which suit him to manage the affairs of a modern penal institution, and it shall be his duty to carry out the policies of the Texas Prison Board. The Board shall manage and control the prison system through the manager selected by it. In addition to his salary, which salary shall not exceed Eight Thousand (\$8,000.00) Dollars per annum, said manager shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the prison system. The Board shall delegate to such manager authority to manage the affairs of the prison system, subject to its control and supervision. The duty of such manager shall extend to the employment and discharge, with the approval of the Board, of such persons as may be necessary for the efficient conduct of the prison system. The manager, with the consent of the Texas Prison Board, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color,

age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 11.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Director of Corrections. See art. 6166a-1.

#### Art. 6166k. Director's Removal

The Texas Prison Board <sup>1</sup> shall have the power at any time to remove the manager <sup>2</sup> for inefficiency, improper conduct, or for any other cause or reason after due notice to him of their intention, and an opportunity given to said manager to be heard.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 12.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

#### Art. 6166l. Director's Accounts

The manager <sup>1</sup> shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the Prison System,<sup>2</sup> including all receipts and disbursements of every character. He shall receive and receipt for all money paid to him from every source whatsoever, and shall sign all warrants authorizing any disbursement of any sum or sums on account of the prison system, and no money shall be paid out on any account of the prison system except on a warrant signed by him and countersigned by the auditor of the prison system. He shall keep full and correct accounts with each industry, department and farm of the prison system, and with all persons, firms, or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officers or employees of the prison system at stated intervals.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 13.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166m. Remittances to State Treasurer

On Monday of each week, the Manager <sup>1</sup> shall remit to the State Treasurer all moneys belonging to the Prison System <sup>2</sup> received by him during the preceding week. Such funds when received shall be deposited by the State Treasurer upon the warrant of the Comptroller to the credit of the general revenue fund. The Manager shall be furnished with a receipt for such money, and a duplicate of such receipt shall be sent to the Chairman of the Texas Prison Board <sup>3</sup> and another duplicate to the State Auditor. All bills and accounts of said Prison System shall be paid from appropriations made by the Legislature from the general revenue fund of the State, upon sworn accounts and warrants drawn by the State Comptroller on the State Treasurer in the same manner as provided by General Law. Each account shall be approved by the Manager, or in his absence by the Executive Assistant and the Chief Accountant, or in his absence by the Cashier of the Texas Prison System. The Comptroller shall

have authority to issue warrants, and the Treasurer to pay same, upon accounts approved by the General Manager or the Executive Assistant and the Chief Accountant or the Cashier of the Texas Prison System.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 14; Acts 1951, 52nd Leg., p. 773, ch. 424, § 2.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

<sup>3</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166m-1. Discharged Convicts Revolving Fund Created

From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside sufficient amount of money received by him from the General Manager of the Texas Prison System <sup>1</sup> as money earned by, and belonging to the State Prison System <sup>2</sup> to be kept on deposit in Huntsville, Texas, Twenty-five Thousand Dollars (\$25,000.00) to be known as the Discharged Convicts Revolving Fund, and the State Treasurer shall at all times keep said Discharged Convicts Revolving Fund up to the maximum amount out of funds above provided, and said funds shall be used for the prompt payment in cash to all discharged, pardoned or paroled convicts; such funds to be deposited in equal amount in the Huntsville Bank and Trust Company at Huntsville, and the First National Bank at Huntsville, and said banks shall deposit with the General Manager of the Prison System, bonds and/or other securities to be approved by the Attorney General of the State of Texas, sufficient to secure said deposits.

[Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 1.]

<sup>1</sup> Changed to director of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

#### Art. 6166m-2. Weekly Reports by Depositories to State Treasurer

It shall be the duty of the depositories of the Discharged Convicts Revolving Fund so long as they retain such deposit to make a weekly report to the State Treasurer of the State of Texas as to the condition of the fund on deposit in said depository.

[Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 2.]

#### Art. 6166n. Competitive Bids for Contracts

All contracts for the purchase of materials, supplies, equipment and sustenance for the prison system shall be upon competitive bids, except as hereinafter provided. Where the amount to be expended is in excess of the sum of \$2,000.00 the purchase shall be made upon sealed competitive bids received by the manager <sup>1</sup> after ten days advertisement in some paper or papers of general circulation in this State. Where the amount of the purchase is less than \$2,000.00 the manager shall, before letting any contract for such purchase, ask and receive not less than three sealed competitive bids for such contract. In cases of emergency where the contemplated expenditure does not exceed

\$500.00, the purchase may be made without competitive bids.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 15.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166o. Sale of Prison Products

The Board shall have power to authorize the manager to sell and dispose of all products of all farms and industries connected with the prison system and all personal and moveable property, at such prices and on such terms and render such rules as it may deem best and adopt; and it may lease any real estate for agricultural or grazing purposes or lease other fixed property and appurtenances belonging thereto upon such terms as it may deem advantageous to the interests of the prison system.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 16.]

#### Art. 6166p. Bonds of Director and Others

The Texas Prison Board<sup>1</sup> shall require the manager<sup>2</sup> to execute a good and sufficient bond payable to the State of Texas in the sum of \$50,000.00, conditioned for the faithful performance of the duties of his office and the accurate accounting for all moneys and property coming into his hands; and it may require of other officers, employees and agents of the prison system a good and sufficient bond in such sum as it may determine upon, payable to the State of Texas upon like condition. Such bonds shall be approved by the Texas Prison Board and filed with the Comptroller, and shall be executed by a surety company authorized to do business under the laws of this State, and the premium on any such bond shall be paid by the State out of the support and maintenance fund of the prison system.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 17.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

#### Art. 6166q. Repealed by Acts 1951, 52nd Leg., p. 306, ch. 182, § 1

The repealed article, derived from Acts 1927, 40th Leg., p. 298, ch. 212, § 18, authorized appointment of an auditor for the prison system. See, now, art. 4413a-21.

#### Art. 6166r. Transportation of Prisoners

The manager<sup>1</sup> shall make suitable provision and regulations for the safe and speedy transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the Prison Board<sup>2</sup> where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and

post-office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspondence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 19.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

#### Art. 6166s. Director and Members of Board to Administer Oaths

The manager<sup>1</sup> and each member of the Prison Board,<sup>2</sup> in the discharge of their duties, are authorized to administer oaths, to summon and examine witnesses, and take such other steps as may be necessary to ascertain the truth of any matter about which they may have the right to inquire.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 20.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

#### Art. 6166t. Food for Prisoners

The manager<sup>1</sup> shall see that all State prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity, and reasonable variety, and he shall hold under officers performing this work strictly to account for any failure to carry out his<sup>2</sup> provision. That the food may be properly prepared, he shall provide for the training of prisoners as cooks. Prisoners shall not be allowed spirituous, vinous nor malt liquors, except from the prescription of a physician.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 21.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> So in enrolled bill. Probably should read "this".

#### Art. 6166u. Separation of Female Prisoners

All female prisoners shall be kept separate and apart from the male prisoners. Where practicable, the manager shall keep the female prisoners upon a separate farm, or at a separate prison from the male prisoners, and shall provide reasonable rules and regulations for the government of same.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 22.]

#### Art. 6166v. Commutation for Good Conduct

In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline, commutation of time for good conduct shall be granted by the manager, and the following deduction shall be made from the term or terms of sentences when no charge of misconduct has been sustained against a prisoner, viz.: two days per month off of the first year's sentence; three days per month off of the second

year of sentence; four days per month off of the third year of sentence; five days per month off of the fourth year of sentence; six days per month off of the fifth year of sentence; seven days per month off of the sixth year of sentence; eight days per month off of the seventh year of sentence; nine days per month off of the eighth year of sentence; ten days per month off of the ninth year of sentence; fifteen days per month off of the tenth year, and all succeeding years of sentence. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner in any year of the term each commutation allowed for one month of such year may be forfeited, for any sustained charge of escape or attempt to escape, mutinous conduct or other serious misconduct, all the commutation which shall have accrued in favor of the prisoner up to that day shall be forfeited unless in case of escape, the prisoner voluntarily returns without expense to the State, such forfeiture may be set aside by the manager. For extra meritorious conduct on the part of any prisoner, he shall be recommended to the favorable consideration of the Governor for increased commutation or pardon, and in case of any prisoner who shall have escaped and been captured, part or all of his good time thereby forfeited may be restored by the manager, if in his judgment his subsequent conduct entitles him thereto.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 23.]

#### Art. 6166w. Clothing

Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners, and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only. The manager<sup>1</sup> may allow the prisoners to wear citizens underwear.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 24.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166x. Labor of Prisoners

Prisoners shall be kept at work under such rules and regulations as may be adopted by the manager with the Board's approval; provided, that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. This "necessary and essential work" shall be subject to the recommendation by the general manager<sup>1</sup> to the Prison Board<sup>2</sup> and shall become effective only after approval by

said Board. Sunday work on jobs approved by the Prison Board shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The Prison Board shall have the power to designate certain fixed overtime hours which it considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this Section, shall be dismissed from the service.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 25; Acts 1929, 41st Leg., p. 485, ch. 229, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

#### Art. 6166x-1. Labor of Prisoners; Overtime Allowance

Prisoners confined in the State Penitentiary shall be kept at work under such rules and regulations as may be prescribed by the general manager,<sup>1</sup> with the consent and approval of the Prison Board,<sup>2</sup> provided that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction from their sentence of double the hours so worked; and provided further that ten hours shall constitute a day to be deducted from his sentence. This "necessary and essential work" shall be subject to the recommendations or orders of the general manager. Sunday work on jobs approved by the general manager shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to

the credit of the inmate. The general manager shall, with the consent and approval of the Prison Board, have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner, all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner, upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provisions of this Section, shall be dismissed from the service. This Act shall be retroactive and become effective as of June 1, 1938.

[Acts 1939, 46th Leg., p. 534, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

#### Art. 6166x-2. Convict Labor on Sam Houston State College Campus

Sam Houston State College may use the labor of trusty state convicts on the campus of the college. The Texas Department of Corrections may supply available convicts for this purpose and shall retain control of the convicts at all times. The time spent by a convict working on the campus shall be counted as time served in the penitentiary.

[Acts 1967, 60th Leg., p. 434, ch. 199, § 1, eff. Aug. 28, 1967.]

#### Art. 6166x-3. Work Furloughs

##### Employment of Prisoners Outside the State Prison System

Sec. 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe.

##### Establishment of Work Furlough Plan

Sec. 2. The department of corrections is authorized and directed to establish a "Work Furlough Plan" under which an eligible prisoner may be released from actual confinement, while remaining in technical custody, during the time required to proceed to the place of business of such prisoner's employer, perform the duties required and return to quarters designated by the department of corrections. Prisoners shall be granted work furlough privi-

leges by the director of the department of corrections, pursuant to the rules and regulations promulgated by the department of corrections. If the prisoner furloughed hereunder shall violate any of the conditions prescribed by the director, pursuant to the rules and regulations adopted by the department of corrections for the administration of the work furlough plan, or who shall willfully abscond while so employed, then such prisoner shall be transferred to the general prison population and be governed by the rules and regulations pertaining thereto. The rules and regulations promulgated for the administration of the work furlough plan shall be established and promulgated in the same manner as are other rules and regulations for the government and operation of the department of corrections.

##### Quartering of Prisoners

Sec. 3. The department of corrections shall, as the need becomes evident, designate and adapt facilities in the State Prison System, or in the area of such prisoner's employment, for quartering prisoners with work furlough privileges. No prisoner shall be granted work furlough privileges until suitable facilities for quartering such prisoner have been provided in the area where the prisoner has obtained employment or has an offer of employment.

##### Securing Employment

Sec. 4. The director of the department of corrections shall endeavor to secure employment for unemployed eligible prisoners under this Act, subject to the following:

(1) such employment must be at a wage at least as high as the prevailing wage for similar work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area;

(2) such employment shall not result in the displacement of employed workers or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers in the locality, the existence of such surplus to be determined by the Texas Employment Commission;

(3) prisoners eligible for work furlough privileges shall not be employed as strike-breakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections.

##### Wages and Salaries of Prisoners

Sec. 5. The wages and salaries of these prisoners employed in the free community may be paid to the department of corrections by the employer, or the department of corrections may require that the prisoner surrender such of the earnings, less standard deductions required by law, to be disbursed as hereinafter provided. The director shall cause the same to be deposited in a trust checking account and shall keep a

record showing the status of the account of such prisoner. Such accounts and records shall be audited at least once annually by the state auditor, who shall prepare a written report or reports of such audit or audits to the legislative budget board. Such wages or salary shall be disbursed only as provided in this Act and for tax purposes shall be considered to be income of the prisoner.

#### Disbursement of Wages or Salaries

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited periodically, but at least annually, in the general revenue fund of the state. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

- (1) necessary travel expense to and from work and other incidental expenses of the prisoner;
- (2) support of the prisoner's dependents, if any;
- (3) the balance, if any, to the prisoner upon his discharge.

#### Time Credits

Sec. 7. Prisoners employed under this Act shall be eligible for time credits in the same manner as other prisoners in the State Prison System.

#### Prisoner Not an Agent of State

Sec. 8. No prisoner granted work furlough privileges under the provisions of this Act shall be deemed to be an agent, employee, or involuntary servant of the department of corrections while working in the free community or while going to and from such employment.

#### Rights of Prisoners

Sec. 9. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any prisoner. No prisoner compensated under this Act shall come within any of the provisions of the Workmen's Compensation Act, as amended, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

#### Reports

Sec. 10. The department of corrections shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature and the legislative budget board showing the operation and administration of the Act, together with such recommendations and suggestions as deemed advisable.

#### Bonding of Administrator of Program

Sec. 11. The department of corrections shall require the administrator and such as-

sistants as it may deem necessary, of the work furlough program hereinabove authorized to execute a bond in the sum of \$10,000 payable to the State of Texas, conditioned upon the faithful discharge of his duties, with a solvent surety company licensed to do business in Texas as surety.

[Acts 1969, 61st Leg., p. 1599, ch. 493, eff. Sept. 1, 1969.]

#### Art. 6166y. Prisoners' Money

Prisoners, when received into the penitentiary, shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the manager,<sup>1</sup> and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. If a prisoner with money charged to his credit should die from any cause while in the penitentiary, escape from the penitentiary, or be discharged without claiming such money, the manager shall make effort to give notice of such fact to the discharged prisoner or to the beneficiary or nearest known relative, if any, of the deceased, escaped, or discharged prisoner, and upon a valid claim presented, pay out such money to such discharged prisoner, beneficiary or nearest relative. After two years from the date of giving such notice, or a valid attempt to give such notice, or two years after the death of such prisoner, if the beneficiary or nearest relative is unknown, if such money has not been validly claimed the manager shall make an affidavit of such fact, and forward the sums of such money, together with the affidavit, to the State Treasurer, which sums shall escheat to the state. Any officer or employee having charge of the prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary for a term of not more than five years.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 26; Acts 1955, 54th Leg., p. 565, ch. 182, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z. Reports of Death

The manager<sup>1</sup> or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner, and it shall be the duty of said justice of the peace, when so notified of the death of such prisoner, to go in person, and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner, and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the manager, and a copy of the same to the district judge of the county in which said prisoner died, and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding

grand jury, and the said judge shall charge the grand jury, if there should be any suspicion of wrongdoing shown by the inquest papers, to thoroughly investigate the cause of such death. Any officer or employee of the prison system having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and by confinement in the county jail, not less than sixty days, nor more than one year, provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor, and approved by the manager.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 27.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z1. Discharge

When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole or conditional pardon, the General Manager of the Texas Prison System<sup>1</sup> or his Executive Assistant shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving convict's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the convict as may be practicable. He shall be furnished, if needed, suitable civilian clothes, and all money held to his credit by any official of the Texas Prison System<sup>2</sup> shall be delivered to him.

The amount of money which a convict is entitled to receive from the State of Texas when he is discharged from the State penitentiary or released from the State penitentiary on parole or conditional pardon shall be \$100.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 28; Acts 1933, 43rd Leg., p. 548, ch. 179; Acts 1953, 53rd Leg., p. 489, ch. 175, § 1; Acts 1971, 62nd Leg., p. 49, ch. 26, § 1, eff. Sept. 1, 1973.]

<sup>1</sup> Changed to Director of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

#### Art. 6166z2. Visitors Admitted

The Governor, and all other members of the Executive and Judicial Departments of the State and members of the Legislature shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 29.]

#### Art. 6166z3. Rewards on Escape

The manager,<sup>1</sup> with the Board's approval, may offer such reward for the apprehension of an escaped prisoner, as may be fixed by the manager and to be paid as directed by the manager.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 30.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z4. Guards and Other Officers

Any sergeant, guard or other officer or employee of the prison system of this State, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and upon conviction thereof, shall be punished as prescribed by law, and it shall be the duty of the manager<sup>1</sup> to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 31.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z5. Gambling Forbidden

No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employee engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 32.]

#### Art. 6166z6. Seal of Board

The prison Board<sup>1</sup> shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Prison Board of Texas," around the margin, which seal shall be used to attest all official acts.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 33.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166z7. Board of Prison Commissioners Abolished

If any section or provision of this Act<sup>1</sup> shall contravene the terms of the Constitution of this State, or be otherwise held invalid for any reason, the same shall not affect the validity of the remainder of the Act. The Board of Prison Commissioners is abolished and all power, authority, duties and functions of the Board of Prison Commissioners of this State under other laws of this State and not repealed by this Act and not in conflict herewith, shall hereafter vest in and be performed by the Texas Prison Board,<sup>2</sup> created by this Act.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 34.]

<sup>1</sup> Articles 6166a to 6166z7.

<sup>2</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166z8. Sale of Prison Made Goods

Sec. 1. No sale of prison made goods in intra state commerce in this State shall ever be

valid, and no action shall be brought in this State to enforce the collection or payment of any money or other thing of value pursuant to any such sale, unless at the time of such sale there is attached to the container or package thereof and upon each and every individual garment or article of such goods so sold, a plain and distinct label printed in the English language, containing the printed words "PRISON MADE MERCHANDISE," which printed words shall be printed in type not less than one-fourth of an inch in height and shall be plainly legible.

Sec. 2. The words "PRISON MADE GOODS" as used in this Act mean any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentiary or reformatory or penal institution or by any convicts or prisoners or persons serving sentences in a reformatory or penal institution of any kind.

[Acts 1927, 40th Leg., p. 370, ch. 251.]

#### Art. 6166z9. Salaries of Employés of State Penitentiary

Sec. 1. That hereafter the following employees of the State Penitentiary System, in addition to their board and lodging, and such clothes and provisions as may be provided by appropriations, shall receive such salaries as may be fixed by the Prison Board,<sup>1</sup> not exceeding the following amounts, unless otherwise provided in the Biennial Appropriation, to-wit: Each guard, One Hundred (\$100.00) Dollars per month; each steward, One Hundred (\$100.00) Dollars per month; each gin manager, One Hundred-ten (\$110.00) Dollars per month; each dog sergeant, One Hundred (\$100.00) Dollars per month; each assistant farm manager, One Hundred Twenty-five (\$125.00) Dollars per month.

Sec. 2. Provided that all employees to receive such salaries shall be invested, and the employer of each shall be satisfied as to the employee's morals, honesty and other qualities touching his proficiency as such an employee before such salary increase shall be paid.

Sec. 3. All guards and other employees shall have free medical attention from the prison physician, and free hospital privileges in the prison hospital, when such guards and other employees have been injured while in the performance of their duties, in connection with the Prison System.<sup>2</sup>

[Acts 1929, 41st Leg., 1st C.S., p. 98, ch. 44; Acts 1935, 44th Leg., p. 413, ch. 163.]

<sup>1</sup> Changed to Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166z10. Liability Insurance of Persons Operating Motor Vehicles and Aircraft Used by Department of Corrections

Sec. 1. The Texas Board of Corrections may insure the officers and employees of the Texas Department of Corrections from liability to third persons arising from and out of the use and operation of automobiles, motor trucks,

other motor vehicles, and aircraft used by the Texas Department of Corrections for the transportation of prisoners, for the transportation of the products of the Department of Corrections or for other purposes legitimately connected with the operation of the Texas Department of Corrections, by procuring policies for that purpose with some reliable insurance company authorized to do business in this State. The Board may also insure any aircraft owned by the Department of Corrections against damage to, or loss, theft, or destruction of, the aircraft. All insurance taken out by the said Board for and in behalf of the benefits of the State shall be on forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

Sec. 2. All policies of insurance heretofore subscribed by the Texas Prison Board for the purposes hereinabove enumerated are hereby validated, approved and are declared to be in full force and effect.

[Acts 1933, 43rd Leg., p. 624, ch. 208; Acts 1973, 63rd Leg., p. 52, ch. 35, § 1, eff. April 12, 1973.]

Arts. 6167 to 6180. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

### 2. REGULATIONS AND DISCIPLINE

Arts. 6181 to 6184. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

#### Art. 6184a. Prison Trustees

Any person serving a prison sentence of one or more years in the Texas State Penitentiary, who has a good prison record may be appointed a trustee after he shall have served three months in the ranks, and not before, except in cases of extreme necessity to fill vacancies in clerical positions in the prison system, in which latter event any person who may be deemed reliable and competent to fill such position may be appointed a trustee by the Prison Commission.<sup>1</sup>

[Acts 1925, 39th Leg., ch. 19, p. 46, § 1.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

#### Art. 6184b. Appointment

Only the Board of Prison Commissioners<sup>1</sup> shall have authority to appoint trustees, and it shall be unlawful for any warden, farm manager or any other person, or persons save and except the Board of Prison Commissioners alone, having charge of said convicts to use any of said convicts as trustees until they shall have been appointed by said Board of Prison Commissioners, under an order issued by the chairman of said Board of Prison Commissioners and under the seal of said Board of Prison Commissioners. Provided, that in cases of extreme emergency, to be judged of by the farm managers, any farm manager may fill a vacancy in any position theretofore held by a trustee for a length of time not to exceed ten days.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 2.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184c. Repeaters Not to be**

Persons who are commonly called "repeaters," that is to say, those who are serving as many as three different terms, shall not be used as trusties, except in cases where they have an unblemished prison record and then only while serving the last half of their last sentence.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 3.]

**Art. 6184d. Convicts Charged With Other Offenses Not to be**

Persons serving sentences in the Texas State Penitentiary who are wanted in other States for crime or crimes committed there, or who have other charges of the felony grade pending against them in this or any other State, shall not be appointed trusties.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 4.]

**Art. 6184e. Trusties to Leave Prison When**

No person who has been appointed a trusty shall be permitted to leave the prison where such person is located except upon business connected with the prison.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 5.]

**Art. 6184f. Violations of Trust**

Whenever a convict violates his trust or his conduct is such that he makes himself objectionable to the citizens of the community in which he is located, and complaint is made to the Board of Prison Commissioners,<sup>1</sup> or to any officer having charge of said convict by two or more good and reliable citizens, and it is found upon investigation by the Prison Commission that the complaint is well founded, such convict shall not thereafter be eligible to appointment as a trusty for twelve months. It shall be the duty of the Prison Commissioners to see that the warden and farm managers faithfully carry out the provisions of this Act.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 6.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184g. Absence of Trusties From Prison**

No trusty shall be permitted to be at large or off the prison property after 9:00 p. m., except when accompanied by a guard or other officer of the prison system, and it shall be the duty of all officers of the prison system having convicts in charge, whether at the prison proper, or on any of the farms, or elsewhere, to see that all trusties are inside the prison buildings by not later than 9:00 p. m., provided that trusties who may be accompanied by a member of the commission or other officer of the prison system and who are on journeys away from the penitentiary at Huntsville, or the farms where such prisoners are located, shall be exempted from the provisions of this section of the Act while actually away from headquarters.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 7.]

**Art. 6184h. Prisoner Attempting Escape With Firearm Not to be Trusty**

No prisoner who attempts to escape by the use of firearms or any other deadly weapon, or

who in attempting to escape wounds a guard, citizen or any other person shall be made a trusty.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 8.]

**Art. 6184i. Not to Apply to Honor Farms**

Provided nothing in this Act shall apply to any farm which has or may be hereafter established by the Prison Commission<sup>1</sup> as an honor farm.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 9.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184j. Exemptions**

It is provided in this Act that trusties who run the pumps and other necessary machinery at night upon the prison farm, shall be exempt from the provisions of Section Seven (7) of this bill.<sup>1</sup>

[Acts 1925, 39th Leg., ch. 19, p. 47, § 10.]

<sup>1</sup> Article 6184g.

**Art. 6184k. Failure to Enforce**

Any member of the Board of Prison Commissioners,<sup>1</sup> or any warden or farm manager, or any other employee of the Board of Prison Commissioners, whose duty it is to enforce the provisions of this Act who shall fail or refuse to enforce the same shall be subject to removal from office.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 11.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184k-1. Supervisory or Disciplinary Authority of Inmates**

Sec. 1. An inmate in the custody of the Texas Department of Corrections or in any jail in this state may not act in a supervisory or administrative capacity over other inmates.

Sec. 2. An inmate in the custody of the Texas Department of Corrections or in any jail in this state may not administer disciplinary action over another inmate.

[Acts 1973, 63rd Leg., p. 796, ch. 357, eff. Aug. 27, 1973.]

**Art. 6184l. Commutation for Good Conduct**

In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience shall be granted by the General Manager<sup>1</sup> and twenty (20) days per month deduction shall be made from the term or terms of sentences of all prisoners in Class I; provided, however, that for State-approved trusties thirty (30) days deduction per month shall be made from the term or terms of all sentences of such State-approved trusties, and ten (10) days per month deduction shall be made from the term or terms of sentences of all prisoners in Class II as hereinafter provided, when no charge of misconduct has been sustained against a prisoner. A prisoner un-

der two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape), any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the General Manager upon the recommendation of the Classification Committee and/or the Disciplinary Committee unless, in case of escape, the prisoner voluntarily returns without expense to the State, such forfeiture shall be set aside by the General Manager. No overtime allowance or credits, in addition to the commutation of time herein provided for good conduct, may be deducted from the term or terms of sentences with the exception that for extra meritorious conduct on the part of any prisoner, he may be recommended to the Board of Pardons and Paroles and to the Governor for increased commutation or for a pardon or parole.

This Act shall not take effect in the cases of those prisoners who at the time this Act takes effect are being credited with more than twenty (20) days per month by virtue of overtime job assignments except upon removal from such assignment because of misconduct, escape, or return to prison because of violation of clemency; provided, however, should any prisoner be removed from any such assignment because of misconduct, an appeal shall lie to the Disciplinary Committee, and in the event of an adverse decision by said Disciplinary Committee, the prisoner so removed by reason of misconduct shall have the right to appeal to the Texas Prison Board,<sup>2</sup> whose decision shall be final.

When present overtime job assignments carrying more than twenty (20) days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty (20) days per calendar month.

The Classification Committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in three (3) classifications: Class I, Class II, Class III; and reclassify any of such prisoners from time to time as in their opinion the circumstances may require. The General Manager shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all classifications, changes of classifications and forfeitures of commutation of time and reasons therefor. As soon as practicable, the General Manager shall change the conduct records of prisoners now in the penitentiary to conform with said conduct record and calendar card. The Classification Committee referred to in this Act shall be appointed and created by the Prison Board and shall consist of: The Warden, General Manager, Classification Director, Chaplain, Assistant Warden, and a Doctor. The Disciplinary Committee referred to in this

Act shall be created by act of the Prison Board, and shall be composed of: The Warden, Chaplain, a Psychologist, and/or a Representative of the Classification Committee.

[Acts 1943, 48th Leg., p. 635, ch. 361; Acts 1945, 49th Leg., p. 245, ch. 180, § 1; Acts 1949, 51st Leg., p. 17, ch. 21, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment

Sec. 1. It shall be unlawful for any officer or employee of the Texas Department of Corrections or for any other person to furnish, attempt to furnish, or assist in furnishing to any inmate of the Texas Department of Corrections any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into the confines of property belonging to the Texas Department of Corrections which is occupied or used by prisoners except for delivery to a prison warehouse or pharmacy or to a physician.

Sec. 2. As used in this Act, "alcoholic beverage" shall have the meaning defined in the Texas Liquor Control Act, as heretofore or hereafter amended; "controlled substance" means any substance defined as a controlled substance by the Texas Controlled Substances Act;<sup>1</sup> and "dangerous drug" means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1925, as amended (Article 726d, Vernon's Texas Penal Code).<sup>2</sup>

Sec. 3. Any person who violates any provision of this Act shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than two years nor more than fifteen years.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and to this end the provisions of this Act are declared to be severable.

[Acts 1957, 55th Leg., p. 33, ch. 21, eff. March 11, 1957; Acts 1973, 63rd Leg., p. 1171, ch. 429, § 6.03(h), eff. Aug. 27, 1973.]

<sup>1</sup> Article 4476-15.

<sup>2</sup> Transferred to Civil Statutes art. 4476-14.

Arts. 6185 to 6195. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

Art. 6196. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1; Acts 1953, 53rd Leg., p. 489, ch. 175, § 2

Arts. 6197 to 6202. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

Art. 6203. Repealed by Acts 1947, 50th Leg., p. 1049, ch. 452, § 34

### Art. 6203a. Lease of Prison Lands for Oil and Gas

#### Creation of Board

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the chairman of the State Prison Board,<sup>1</sup> who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of Texas Prison Lands." The term "Board" wherever it appears hereafter in this Act shall mean the "Board for Lease of Texas Prison Lands." This Board shall keep a complete record of all its proceedings.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Lands Subject to Lease

Sec. 2. All lands or any parcel of same now owned, or that may be owned and held by the State as State prison lands may be leased by the Board to any person, or persons, firms, or corporation, subject to and as provided for in this Act for the purpose of prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and/or gas therein belonging to the State.

#### Subdivision of Lands; Abstracts of Title

Sec. 3. The Board is hereby authorized to cause the State Prison Lands to be surveyed and sub-divided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of Title to all prison lands, and cause same to be examined by the Attorney General, who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas leases on said lands.

#### Advertisements for Bids

Sec. 4. Wherever, in the opinion of the Board there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold and that sealed bids for the purchase of said oil and/or gas by lease will be opened at a designated day, at ten o'clock, A.M., that day and that sealed bids received up

to that time will be considered. Said advertisements shall be made:

(a) By mailing a copy thereof to the County Judge of every County in this State, two daily newspapers published in Texas.

(b) In addition the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State to be mailed generally to such persons as they think might be interested.

#### Opening and Acceptance of Bids

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids and upon that day the said Board, or a majority of its members shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One Dollar per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

#### Payments Accompanying Bids

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for delay in the drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

#### Lease to Bidder; Rejection of Bids

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All

bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

**Bid Filed in General Land Office**

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

**No Rentals Payable Pending Drilling Operations; Lease Continued During Productive Period**

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

**Assignment of Rights**

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties, in which area may be situated and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipeline, telephone lines, and the opening of such roads over the Prison lands as may be deemed

reasonably necessary for and incident to the purpose of this Act.

**Royalties Paid to General Land Office; Sworn Statements as to Production**

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for benefit of the General Revenue Fund on or before the last day of each month for the preceding month during the life of the rights purchased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools and gas lines or gas storage. The books and accounts and all bids, receipts and discharges of all wells, tank pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be on file in the General Land Office and be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or any member of the State Prison Board.<sup>1</sup>

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

**Protection of Contiguous or Adjacent Lands**

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous or adjacent to land not Prison land, the acceptance of the bid and the sale made thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold, as a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

**Forfeitures; Grounds**

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within

thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeitures, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone line, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

#### Records Filed in General Land Office

Sec. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the General Revenue Fund and all rentals for delay in drilling and all other payments including all filing assignments and relinquishment fees hereunder to the credit of the General Revenue Fund.

#### Expenses Paid by Comptroller's Warrant

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand (\$2,000.00) Dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1930.

#### Partial Invalidity

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

#### Forms and Regulations Adopted by Board

Sec. 17. The Board shall adopt proper forms and regulations, rules and contract as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids, and shall have the further right to withdraw any lands advertised for lease prior to receiving and

opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

[Acts 1930, 41st Leg., 4th C.S., p. 16, ch. 13; Acts 1939, 46th Leg., p. 479, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 3, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 914, ch. 400, § 9, eff. June 8, 1967.]

#### Art. 6203aa. Permits for Geological Surveys

The Board for Lease of Texas Prison Lands heretofore created, composed of the Commissioner of the General Land Office, the Attorney General and the Chairman of the State Prison Board,<sup>1</sup> is hereby authorized to grant permits for geological surveys or investigations on Prison Lands, which said Board has heretofore been authorized to lease for oil and gas, for such consideration and under such terms and conditions as said Board may deem to the best interest of the State of Texas, and which will encourage the development of said lands for oil and gas, which surveys shall be made in such way as to not unreasonably interfere with the operation of said Prison System.

[Acts 1943, 48th Leg., p. 412, ch. 279, § 1.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6203b. Schooling for State Convicts

Sec. 1. The Texas Prison Board<sup>1</sup> shall immediately arrange for the teaching of reading, writing, spelling and arithmetic to all inmates of the penitentiary of the State of Texas. All illiterates shall receive instruction the equal of five hours per week and all other prisoners may at their option receive such instruction. The hours fixed for such instruction shall be other than those hours now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from organizing for themselves special instruction or classified instruction of a higher class than that enumerated herein above.

Sec. 2. Each prisoner attending such instruction in good faith, or who shall act as an instructor of such prisoners, shall be allowed as a credit on the term of his sentence one-half hour additional than that now allowed by law for good behavior for each hour in attendance either as receiver or giver of instructions.

Sec. 3. It shall be the duty of the Chaplains of the prison system to organize under the direction of the Texas Prison Board such instruction, and to supervise the same after organization. Prisoners with the aid of the Chaplains shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to and shall prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective, but said Texas Prison Board shall not be required to build any additional buildings for said purpose. The Texas Prison Board shall arrange with the State Superintendent of Public Instruction for a sufficient number of second-hand text books for said purpose.

Sec. 5. There shall be read and explained for at least one hour of each school week por-

tions of the Constitutions of the United States and the State of Texas.

[Acts 1930, 41st Leg., 4th C.S., p. 54, ch. 31.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

**Art. 6203b-1. Schools in Penitentiaries and Penitentiary Farms; Compulsory Attendance**

Sec. 1. The Texas Prison Board<sup>1</sup> shall cause all illiterates to receive instruction the equal of not less than five (5) nor more than eight (8) hours per week and all other prisoners may, at their option, receive academic or vocational instruction at such hours. The hours fixed for such instruction shall be other than those now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from enrolling in academic instruction or special occupational or vocational instruction as now provided for by the Texas Prison Board.

Sec. 2. Each prisoner attending such instruction in good faith shall be allowed as a credit on the term of his sentence one hour additional for each hour in attendance of school classes.

Sec. 3. It shall be the duty of the Educational Director of the Prison System<sup>2</sup> to organize and direct a standard program of academic and vocational education, under the direction of the Texas Prison Board, and supervise the same after organization. Prisoners, with the aid of the Educational Director, shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to, and shall, prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective; but said Texas Prison Board shall not be required to build any additional buildings for this purpose. Upon the request of the Texas Prison Board, it shall be the duty of the State Superintendent of Public Instruction to supply without cost, a sufficient number of current State adopted text books for said instruction.

Sec. 5. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

[Acts 1941, 47th Leg., p. 1357, ch. 619.]

<sup>1</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

**Art. 6203b-2. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(2), eff. May 26, 1971**

See, now, Education Code, §§ 29.01 to 29.05.

**Art. 6203c. Improvement of Department of Corrections**

**Purpose**

Sec. 1. The purpose of this Act is to renovate, improve and rehabilitate the Central Unit of the Texas Prison System<sup>1</sup> at Huntsville and to construct and modernize the prison farm units of said system to the end that the prison population of Texas may be adequately housed, and securely confined, and gainfully employed in such enterprises as will, in the opinion of the Prison Board,<sup>2</sup> prove most remunerative to the State and beneficial to the prisoners, it being the Legislative intent to first relieve the emergency now existing in the walls at Huntsville by providing for reasonable sanitation and hospitalization within this unit and by supplying needed and practicable industrial equipment therein, and then to relieve prison congestion by erecting permanent housing facilities on and for designated farm units.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

**Powers of Board of Corrections**

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board<sup>1</sup> is authorized and directed as follows:

A. To equip the present property within the walls with reasonable sanitary devices including the installation of a sewer system for all cell blocks and at other points therein if needed.

B. To provide adequate hospitalization within the walls, including equipment for the scientific diagnosis and treatment of diseases and the installation of an adequate medical supply depot.

C. To acquire and install emergency mechanical devices, equipment, and machinery for shops and industries now operated or that may be operated profitably in said Central Unit.

D. To erect and equip such prison farm units, as in the opinion of the Prison Board, are necessary to relieve the present prison congestion. The Board is hereby authorized to erect and equip one modern, sanitary fire-proof farm unit on either the Imperial, the Darrington or the Harlem Farm. Or, in the alternative, if the said Board so elects, it is hereby authorized to erect two such units and locate same on any two of said farms, or if the Board deems expedient, it is hereby authorized to erect three such plants and place one on each of said farms. If one unit is erected it shall be sufficiently commodious to accommodate the number of persons reasonably required for agricultural enterprises on all accessible farms when used in conjunction with the present tenantable and usable facilities now on said farms. If two or three units are erected they shall

be so constructed as to accommodate enough prisoners to care for and tend all land accessible thereto. Such unit or units shall be equipped with modern, sanitary devices and supplied with such facilities as are necessary to insure comfortable and humane living conditions for prison inmates. Each unit shall be equipped with a hospital ward adequate for all anticipated needs.

E. The Prison Board is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the prison system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners. White and Colored prisoners shall be segregated in separate living quarters, work shops, and hospitals.

F. The Prison Board is further directed to take such steps, other and additional, as are incident or necessary to effectuate any and all of the several undertakings herein specially delineated.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6466a-1.

Sec. 3. [Blank]

#### Use of Prison Labor

Sec. 4. In the erection of the improvements authorized by this Act, it shall be the duty of the Prison Board to use prison labor where practicable, but if such labor is found impracticable, then the Board may contract for such free labor as is necessary. For these enterprises the Board is also directed to use the services of any experts, engineers, architects, or specialists now employed by the State in any Department or Institution, and if not inconsistent with pre-existing duties, it shall be incumbent upon any and all such experts, engineers, architects, and specialists to render such aid as may be requested by such Board.

#### Roads Connecting Prison Farms

Sec. 5. The Prison Board and the State Highway Commission are hereby directed to construct such adequate hard surfaced roads as may be necessary to connect the three prison farms specially mentioned in this Act, to-wit: the Imperial, Darrington, and Harlem Farms with existing improved or hard surfaced State or County highways, it being the intention of the Legislature to make these farm units accessible to vehicular traffic at all times. The Highway Department will lay out the necessary roads, make all plans and specifications, necessary therefor, and furnish all such material and equipment as may be necessary for their construction, and also furnish all such supervising, engineering service as may be necessary for such road building projects. The Prison Board is hereby authorized to provide portable housing facilities and road

camps for the purpose of utilizing prison labor on these road building projects. The Prison Board is directed to furnish all labor for these road building enterprises and to cooperate with the Highway Department in their construction, to the end that these projects may be built out of prison labor as nearly as practicable. The expense incurred by the State Highway Department in the construction of these roads shall be borne by said Department and paid out of any funds in its hands available for building or for aiding the construction of public highways in this State.

#### Improvements on Wynne Farm

Sec. 6. The Prison Board is here directed to remodel, repair and renovate the present improvements on the Wynne farm and to make such additions to the present housing and hospital equipment thereon as may, in the opinion of the Board, be necessary to convert same into a modern and sanitary prison unit for all tubercular inmates of the prison system, it being the intention of the Legislature to authorize the Prison Board to so equip this unit as to make the same available for the proper housing, treatment and employment of prisoners afflicted with tuberculosis.

#### Sale of Shaw Farm Authorized

Sec. 7. The Prison Board may in its discretion, sell the Shaw Farm located in Bowie County, (same being all the prison owned land in said County,) at any time after having given public notice in as many as four daily newspapers published in the State, stating the time, place, and terms of sale, and terms being for not less than one-fifteenth cash, with remainder divided into fifteen equal annual payments, maturing in one to fifteen years, with interest payable annually at the rate of 5% per annum, said deferred payments to be secured by vendor's lien. The proposals for purchase shall be in the form of sealed bids accompanied by Cashier's Check, payable to the State Treasurer, for the initial cash payment. All conveyances of such land shall be signed and acknowledged by the Governor of Texas and by the Chairman of the Prison Board. All oil, gas and mineral rights in and to said land shall be reserved to the State of Texas, with the provision that as and when such oil, gas or other minerals are sold, either by lease or otherwise, an equal one-eighth portion of the net proceeds of such sale or sales, shall be paid to the State's vendee of the surface, or the heirs or assigns of said vendee. The State shall reserve the usual rights of ingress and egress, and such other rights as are incident and necessary for the proper exploration of said lands for mineral deposits and for the development and sale of such deposits. The mineral rights reserved to the State shall be under jurisdiction of the Prison Land Leasing Board, and all sales of minerals in and under said Shaw Farm shall be made by said Land Leasing Board as provided in Senate Bill No. 29, passed at the Fourth Called Session of the 41st Legislature. All money derived from the sale of the

surface or mineral rights in said prison land shall be paid into the General Revenue Fund.

**Drainage of Overflow Lands**

Sec. 8. The Prison Board is directed to provide for the levying, drainage and reclaiming of any overflow lands owned by the prison system, and for clearing any uncleared tillable land and for this purpose prison labor shall be used, and the portable road camps and equipment shall be utilized where practicable.

**Prison-Made Goods Act of 1963**

Sec. 9. (a) This Section may be cited as the "Prison-Made Goods Act of 1963."

(b) It is hereby declared to be the intent of this Act:

(1) To provide more adequate, regular and suitable employment for the vocational training and rehabilitation of the prisoners of this state, consistent with proper penal purposes;

(2) To utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment; and

(3) To effect the requisitioning and disbursement of prison products directly through established state authorities without possibility of private profits therefrom.

(c) The Texas Department of Corrections is authorized to purchase in the manner provided by law, equipment, raw materials and supplies, and to engage the supervisory personnel necessary to establish and maintain for this state at the penitentiary or any penal farm or institution now or hereafter under control of said Board, industries for the utilization of services of prisoners in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by this state and the political subdivisions thereof.

(d) On and after the effective date of this Act, all offices, departments, institutions and agencies of this state which are supported in whole or in part by this state shall purchase from the Texas Department of Corrections all articles or products required by such offices, departments, institutions, agencies, or political subdivisions of this state, produced or manufactured by the Texas Department of Corrections with the use of prison labor, as provided for by this Act, and no such article or product may be purchased by any such office, department, institution or agency from any other source, unless excepted from the provisions of this subparagraph as hereinafter provided. All purchases made by state agencies shall be made through the Board of Control upon requisition by the proper authority of the office, department, institution or agency. Political subdivisions of this state may purchase directly from the Texas Department of Corrections.

Any article or product manufactured by the Texas Department of Corrections for sale through the State Board of Control to any office, department, institution or agency of the state or to any political subdivision thereof, shall be manufactured and/or produced only upon state specifications developed by and through the State Board of Control. However, if such specifications have not been developed by the Board of Control then production may be based upon commercial specifications in current use by industry for the manufacture of such articles and products for sale to the state and political subdivisions thereof which have first been approved by the State Board of Control. For purposes of this Act, state specifications and commercial specifications approved by the Board of Control shall mean the latest complete version of any specification including amendments thereto.

(e) Exceptions from the operation of the mandatory provisions in the first paragraph of subparagraph (d) hereof may be made in any case where, in the opinion of the State Board of Control, the article or articles or product or products so produced or manufactured does or do not meet the reasonable requirements of or for such offices, departments, institutions, agencies, or in any case where the requisitions made cannot be reasonably complied with. No such office, department, institution, or agency shall be allowed to evade the intent and meaning of this Section by slight variations from standards adopted by the State Board of Control, when the articles or products produced or manufactured by the Texas Department of Corrections, in accordance with established standards, are reasonably adapted to the actual needs of such office, department, institution, or agency.

(f) The Texas Department of Corrections shall cause to be prepared, at such times as it may determine, catalogues containing an accurate and complete description of all articles and products manufactured or produced by it pursuant to the provisions of this Act. Copies of such catalogues shall be sent to all offices, departments, institutions and agencies of this state and made accessible to all political subdivisions of this state referred to in the preceding subparagraphs. At least thirty (30) days before the beginning of each fiscal year, the Board of Control shall provide to the Texas Department of Corrections summary reports of the kind and amount of articles and products purchased for state offices, departments, institutions, and agencies based upon the previous nine (9) months experience. Not more than one hundred (100) days following the close of each fiscal year, the State Board of Control shall submit to the Texas Department of Corrections a report showing the kinds and amounts of such prison-manufactured articles purchased by all state offices, departments, institutions, and agencies based upon the purchase experience of the entire previous fiscal year. All such reports shall refer, insofar as

possible, to the items or products contained in the catalogue as issued by the Texas Department of Corrections. The Board of Control may at any time request the Texas Department of Corrections to manufacture or produce additional articles or products.

(g) In keeping with the primary objective of vocational training and rehabilitation of prisoners, the articles or products manufactured or produced by prison labor in accordance with the provisions of this Act shall be devoted, first, to fulfilling the requirements of the offices, departments, institutions and agencies of this state which are supported in whole or in part by this state; and secondly, to supplying the political subdivisions of this state with such articles and products.

(h) The Texas Department of Corrections and the Board of Control shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(i) In addition to the information ordinarily required by law in the annual audits of expenditures and operations of the Texas Department of Corrections made by the State Auditor, after the effective date of this Act such annual audit reports shall also include a detailed statement of all materials, machinery or other property procured, and the cost thereof, and the expenditures made during the audited year for manufacturing purposes, together with a statement of all materials on hand to be manufactured, or in process of manufacture, or manufactured, and the values of all machinery, fixtures or other appurtenances for the purpose of utilizing the productive labor of prisoners, and the earnings realized therefrom during the year.

(j) The Texas Board of Corrections shall have the power and authority to prepare and promulgate policies which are necessary to give effect to the provisions of this Act with respect to matters of administration respecting the same.

(k) In order to carry out the provisions of this Act, the Legislature shall authorize in its biennial Appropriations Acts an industrial revolving fund, and set the amount therein, for the use of the Texas Department of Corrections; and said Department is authorized to expend such monies out of appropriations for said revolving fund as may be necessary to erect buildings, to improve existing facilities, to purchase equipment, to procure tools, supplies and materials, to purchase, install or replace equipment, and otherwise to defray the necessary expenses incident to the employment of prisoners as herein provided.

(l) All monies collected by the Texas Department of Corrections from the sale or disposition of articles and products manufactured or produced by prison labor in accordance with the provisions of this Act, shall be forthwith deposited with the State Treasurer to be kept and maintained in the industrial revolving

fund authorized by this Act, and such monies so collected and deposited shall be used solely for the purchase of raw materials, manufacturing supplies, equipment, machinery and buildings used to carry out the purposes of this Act, to otherwise defray the necessary expenses incident thereto, including the employment of such necessary supervisory personnel as is unavailable in the prison inmate population, all of which shall be subject to the approval of the Texas Board of Corrections; provided, however, that said industrial revolving fund shall never be maintained in excess of the amount necessary to carry out efficiently and properly the intentions of this Act. When, in the opinion of the Governor and the Legislative Budget Board, said industrial revolving fund has reached a sum in excess of the requirements of this Act, such excess shall be transferred by the Texas Department of Corrections to the State General Revenue Fund.

(m) On and after the effective date of this Act, it shall be unlawful to sell or offer for sale on the open market of this state, any articles or products manufactured wholly or in part, in this or any other state by prisoners of this state or any other state, except prisoners on parole or probation; however, the Texas Board of Corrections shall have the power to authorize the Director of the Texas Department of Corrections to sell and dispose of all surplus agricultural products and all personal property owned by the Texas Department of Corrections, which have not been manufactured by the Department for the purpose of sale, at such prices and on such terms and under such rules and regulations as it deems best to adopt. The Texas Department of Corrections shall continue to exercise its rights and privileges as provided in the Salvage and Surplus Act of 1957 (compiled as Article 666 of Vernon's Texas Civil Statutes), relative to the sale and disposal of serviceable state personal property no longer needed by state agencies.

(n) Any person who wilfully violates the provisions of subsection (m) of this Act shall be guilty of a misdemeanor, and upon conviction, shall be confined in jail not less than ten (10) days nor more than one (1) year, or fined not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00) or both, in the discretion of the court.

[Acts 1930, 41st Leg., 5th C.S., p. 215, ch. 67; Acts 1943, 48th Leg., p. 104, ch. 75, § 1; Acts 1949, 51st Leg., p. 124, ch. 75, § 1; Acts 1963, 58th Leg., p. 437, ch. 155, § 1, eff. Sept. 1, 1963.]

#### **Art. 6203c-1. Contracts for Construction and Paving Roads in and Adjacent to Department of Corrections' Lands**

Sec. 1. The State Highway Commission and the State Prison Board<sup>1</sup> are hereby authorized to enter into and perform agreements or contracts together for the construction and paving of roads by the State Highway Department in and adjacent to the various prison units of the Texas Prison System.<sup>2</sup>

Sec. 2. All methods, requirements, and procedures necessary to enter into and perform such agreements or contracts, and the payment therefor, shall be in conformity with Chapter 340, Acts of the 53rd Legislature, Regular Session, 1953, known as the Interagency Cooperation Act.<sup>3</sup>

Sec. 3. All laws or parts of laws directly in conflict with this Act are hereby expressly repealed to the extent of such conflict only, but this Act shall be cumulative of all other laws or parts of laws not directly in conflict herewith.

[Acts 1955, 54th Leg., p. 563, ch. 180.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

<sup>3</sup> Article 4413(32).

#### Art. 6203d. Rights-of-Way for Public Highways, Roads, Streets, Ditches, Irrigation Canals, Electric Lines and Pipe Lines Over Penitentiary System Lands

Sec. 1. The Texas Prison Board,<sup>1</sup> by and with the consent of the Governor and the Attorney General of the State of Texas, is hereby authorized and empowered to grant permanent and temporary right-of-way easements for public highways, roads and streets, and ditches, and for electric lines and pipelines consisting of wires, pipes, poles and other necessary equipment for the transmission or conveyance of, or distribution of, water, electricity, gas, oil or other similar substances or commodities, such easements to be not in excess of one hundred and fifty (150) feet in width, along, across and over any and all lands now owned by the State of Texas as a part of the Penitentiary System, or to lease such right-of-ways to districts, companies, firms and individuals carrying on, or formed for the purpose of carrying on, or engaged in, the business of transmitting or conveying or distributing any such substance or commodity.

Sec. 2. Except as hereinafter stated, such grants and leases shall be executed only upon a fair and adequate consideration. All of such grants and leases shall contain full reservation of all minerals in and under said lands, sufficient guarantees as to the use by the State Prison Board of the waters, electricity, gas, oil or other substances or commodities conveyed along, across, or over such right-of-way easements for irrigation, heat, light, power and other purposes, and such other covenants, conditions, and provisions, as to the Texas Prison Board, together with the approval of the Governor and the Attorney General, shall appear to be fair, wise, and reasonable; provided, however, that all of such grants or leases shall require that the person, firm or corporation securing a right-of-way or easement shall pay all costs of any improvements at any time made necessary in crossing any right-of-way or easement, granted or leased to him or it under the provisions of this Act.

The Texas Prison Board may grant easements for state highways to the State Highway Commission without compensation, and may also grant easements to counties without compensation for connecting roads between state highways.

[Acts 1931, 42nd Leg., p. 285, ch. 166; Acts 1943, 48th Leg., p. 281, ch. 177, §§ 1, 2; Acts 1955, 54th Leg., p. 564, ch. 181, § 1.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6203d-1. Deposit of Revenues Derived from Easements; Damages to Property

From and after the effective date of this Act, all monies received by the Department of Corrections derived from easements on property under its custody and control, and all monies received by the Department of Corrections as damages to property under its custody and control shall be deposited to the Texas Department of Corrections Special Mineral Fund, created by the provisions of Section 16 of Senate Bill No. 354, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 325, page 556.<sup>1</sup>

[Acts 1963, 58th Leg., p. 471, ch. 168, § 1, eff. May 17, 1963.]

<sup>1</sup> Article 5382d.

#### Art. 6203e. State Prison Psychopathic Hospital Established and Maintenance Provided

Sec. 1. That there shall be built, established and maintained, as a part of the Prison System<sup>1</sup> of Texas, an Institution for the examination, observation, treatment and incarceration of all persons who have been convicted of felony, and who have been duly adjudged insane by any competent Court at Law in the State of Texas; and, who have been acquitted by a Court of Competent Jurisdiction upon the grounds of insanity; said institution to be known as the State Prison Psychopathic Hospital.

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

Sec. 2. The construction, support and maintenance of said institution shall be made by appropriation to the Prison System of Texas for that purpose. Said Institution shall be located on any land adjacent to, or within the walls of the prison system at Huntsville, Walker County, Texas.

Sec. 3. The Texas State Prison Manager<sup>1</sup> or other person in charge of the management of said prison shall, upon the advice of any prison physician send any prisoner to said Hospital for observation, care and treatment for thirty (30) days, and upon final examination he shall either be returned to confinement or an affidavit of insanity shall be filed against him as is provided by law.

<sup>1</sup> Changed to Director of Corrections. See art. 6166a-1.

Sec. 4. When any person shall be confined in any jail, asylum or other institution of confinement, who is charged by indictment and has been convicted of felony in this State and who has been duly adjudged insane by a Court of Competent Jurisdiction, upon the grounds of insanity shall be confined in said Institution

and all persons who are now confined in the State Hospital for the insane who are classified by the superintendents of said different Hospitals for the insane as criminally insane shall upon proper certificate from the superintendent be transferred from said Hospital for the Insane to the State Prison Psychopathic Hospital.

Sec. 5. No patient in the State Prison Psychopathic Hospital shall be discriminated against by virtue of any fact but they shall all be treated alike, given equal facilities, equal attention and equal treatment, and no patient in said Hospital or Institution shall be permitted to give any officer, servant, agent or employee in such Hospital or Institution any tip, gift, pay or reward of any kind or character whatsoever, and if it is so discovered, the person accepting the tip, gift, pay or reward shall be discharged for accepting the same.

Sec. 6. The State Prison Board<sup>1</sup> shall appoint with the advice of the General Manager of the State Prison System<sup>2</sup> a Superintendent for said Hospital or Institution, a regularly licensed physician, well qualified in the science of psychiatry who shall receive a fixed salary to be fixed by the Legislature not to exceed the sum of Three Thousand Three Hundred (\$3,300.00) Dollars per year, with provisions for himself and family not to exceed Five Hundred (\$500.00) Dollars per year with water, lights, fuel, laundry and housing. The General Manager of the State Prison shall appoint such assistant physicians, well qualified in psychiatry as he may deem best, and said assistant physicians shall receive a salary to be fixed by the Legislature not to exceed Two Thousand Seven Hundred (\$2,700.00) Dollars per year with provisions for board and laundry for himself and family. The manager of the Prison System shall supply the necessary guards.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Director of Corrections. See art. 6166a-1.

Sec. 7. That if in any Court proceedings in<sup>1</sup> any portion of this Act shall be unconstitutional, it shall not affect the other portions of this Act.

[Acts 1931, 42nd Leg., p. 420, ch. 253.]

<sup>1</sup> The word "in" should probably be omitted.

#### Art. 6203f. Encouraging Cotton Farmers to Purchase Planting Seed From Department of Corrections

Resolved by the House of Representatives, the Senate concurring, That as a means toward the development of better quality cotton in Texas, the Prison System<sup>1</sup> of our State, in disposing of its surplus cotton seed, give first consideration to the needs for better planting seed and that the cotton farmers be encouraged to purchase planting seed from the Prison System through their farm agents, Chambers of Commerce and other responsible mediums, and at a price above oil mill quotations sufficient to reimburse the Prison System for the added expense of handling.

[Acts 1931, 42nd Leg., p. 925, H.C.R. No. 25.]

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6203g. Agreement Authorized for Penitentiary System to Produce and Sell Farm Products to State Institutions

Therefore, be it resolved by the Senate of Texas, and the House of Representatives concurring, that the Board of Control of the State of Texas and the Board of Commissioners of the State of Texas are hereby authorized, empowered and instructed to enter into an agreement whereby the Penitentiary System will grow, produce and sell farm products to the various State Institutions at a price not to exceed the lowest bid which the Board of Control may receive from competitive bidders for the various products grown and offered for sale by the Penitentiary System of Texas.

[Acts 1929, 41st Leg., p. 732, S.J.R. No. 26.]

# TITLE 109

## PENSIONS

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### 1. STATE AND COUNTY PENSIONS

#### Art. 6204. Tax

There shall be levied and collected in the same manner and at the same time that other ad valorem taxes are levied and collected for the year of 1925, and annually thereafter, an ad valorem tax of Two (2¢) Cents on the One

Hundred (\$100.00) Dollars valuation thereof on all property owned in the state on the first day of January of 1943, and of every year thereafter, and on all property sent out of the state prior to the first day of January of any of said years for the purpose of evading the payment of taxes thereon, and afterwards returned to the state, except so much thereof as may be exempted by the Constitution and laws of this state or of the United States; which valuation shall be made in the manner prescribed by law for the assessment, levy, and collection of other state and county taxes, which said tax so levied and collected shall be paid into the Treasury of the State of Texas, in the same manner as other state taxes, and shall constitute a special fund for the payment of pensions, as may be provided by law, to Confederate soldiers and their widows, and to other Texas soldiers and militiamen who served during the War between the States entitled to pensions under the laws of Texas, and their widows, and shall constitute a special fund for the payment of such pension in the manner and under the rules and regulations as are and may be prescribed by law. Said fund is hereby expressly appropriated by the Legislature of the State of Texas for the purpose herein stated, and this Act shall not affect or release liability of any person for taxes, penalties, interest or costs accruing under prior laws, or the right to collect or enforce collection thereof by suit or otherwise.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4; Acts 1931, 42nd Leg., p. 434, ch. 262, § 1; Acts 1943, 48th Leg., p. 187, ch. 108, § 1.]

#### Art. 6205. To Whom Granted

Out of the Pension Fund created and maintained under the provisions of Article 6204 as amended, there shall be paid on the first day of each calendar month a pension in the amounts provided for in Article 6221 to every Confederate soldier or sailor whose application has heretofore been approved, and also those who came to Texas prior to January 1, 1928, and whose application shall hereafter be approved, and to their widows whose applications have heretofore been approved and also those who have been bona fide residents of this State since January 1, 1928, and whose application shall hereafter be approved and who were married to such soldiers or sailors prior to January 1, 1922, and who lived with such soldier or sailor continuously for at least nine (9) years immediately prior to the death of such sailor or soldier and to soldiers who, under the Special Laws of the State of Texas during the War between the States, served in organizations for the protection of the frontier against Indian raiders or Mexican marauders, and to soldiers of the militia of the State of Texas who were in active service during the War between the States, and to soldiers of the militia of any other Confederate State who were in active service during the War and who come to Texas at least ten (10) years prior to

the approval hereafter of his application for a pension, and to soldiers appointed to official or other service in the State of Texas, requiring the carrying of arms during the war between the States, and all soldiers and sailors and widows of all soldiers and sailors eligible to be placed upon the pension rolls and participate in the distribution of the Pension Fund of this State under any existing law or laws hereafter enacted; provided that no widow of a Confederate Veteran born since January 1, 1886, shall be entitled to a widow's pension; a widow entitled to a pension under this Act, but who remarries a man other than a Confederate soldier or sailor shall not be entitled to a pension, but shall not be barred from receiving a pension in the event she should be left a widow after such remarriage, so long as she remains a widow. Soldiers or widows who are over eighty-eight (88) years of age, who have been bona fide citizens of Texas since prior to January 1, 1930, shall be entitled to pensions under this Act, if otherwise pensionable.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 330, ch. 153, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 1; Acts 1931, 42nd Leg., p. 434, ch. 262, § 2; Acts 1937, 45th Leg., p. 1318, ch. 485, § 1; Acts 1943, 48th Leg., p. 617, ch. 357, § 1; Acts 1951, 52nd Leg., p. 328, ch. 199, § 1.]

#### Arts. 6206, 6207. Omitted

#### Art. 6208. Application Requirements

Person entitled to a pension under this Title shall make application for same in writing and under oath to the County Judge of his or her county. Such application shall state the name, age, residence of the applicant, and occupation, if any, and every fact necessary to entitle the applicant to the pension. If the applicant is such a soldier or sailor as is prescribed herein, he shall state in his application the Company and Regiment in which he was enlisted; if he served in an organization for the protection of the frontier against Indian raiders or Mexican marauders, he shall name and identify such organizations; if he were an officer commissioned by the President of the Confederate States or by the Governor or other proper authority of this State, in the Army, Navy, Militia or frontier organization, he shall state the date of his commission and his rank therein; and if detailed directly under the provisions of the Conscript Law for duty in the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, or if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall furnish the testimony of at least one credible witness who personally knows that he enlisted in the service and performed the duties as claimed by him. If he cannot secure the testimony of such witness, he may furnish documents or other evidence of his service. Provided, that where the applicant was born prior to 1851, he may make his proof by submitting to the County Judge an affidavit stating his

name, age, residence and occupation, if any, together with every fact necessary to entitle him to a pension. Such affidavit, when executed, shall be accompanied by a sworn statement of at least two (2) credible witnesses who have known the applicant for a period of not less than ten (10) years, and who are in no way related to or interested in the financial welfare of such applicant, and that he is a credible person, and that they believe the statements entitling him to a pension are correct and true.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4; Acts 1931, 42nd Leg., p. 434, ch. 262, § 5.]

#### Art. 6209. Proof, How Made

Proof shall be made under oath and in writing before the county judge of the county where the applicant resides. Should the applicant or witnesses, because of circumstances beyond the control of the applicant, be unable to appear before the county judge, then such proof may be made before any officer authorized to administer oaths. When the proof is made before any other officer, the county judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made is duly qualified and authorized by law to administer oaths and take affidavits; he shall also certify to the citizenship of the applicant, and that the applicant has been a bona fide resident of the county for a period of six months next before the date of said application. The officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit.

[Acts 1925, S.B. 84.]

#### Art. 6210. Out of County

If it is necessary for the applicant to go outside of the county and State for proof to establish his application, such proof may be submitted in the form of affidavits and accompanied by certificates from the county judge of the county where made, that the witnesses are of trustworthy character and entitled to credit.

[Acts 1925, S.B. 84.]

#### Art. 6211. Widow's Application

No widow shall be entitled to a pension should her husband, if living, be for any reason debarred. If the applicant is the widow of a soldier or sailor, who, if living would be entitled to a pension, she shall make oath that she is in fact the widow of such soldier or sailor and, as near as possible, state the facts showing her to be entitled to receive a pension under the provisions of this title in the same manner as required of a soldier or sailor. In case such widow cannot make such proof, she may comply with the provisions of the succeeding article.

[Acts 1925, S.B. 84.]

#### Art. 6212. Proof by Affidavit

The widow of a Confederate soldier or sailor, entitled to a pension may make affidavit to the county judge:

1. That she is in fact the widow of a Confederate soldier or sailor.

2. That her said husband rendered valuable service to the Confederacy, as such, that he did not desert, and was either killed or died, or was honorably discharged from the army.

3. That she has made diligent search for information as to the number of regiment and company in which her deceased husband served, and has been unable to secure the same.

The affidavit shall be filed with the county clerk, and the county judge may take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the Comptroller the grant of a pension to such widow; and, if he is satisfied that she is entitled to a pension under the provisions of this title he may grant it.

[Acts 1925, S.B. 84.]

#### Art. 6213. Soldier Must Have Served Honorably

Every Confederate soldier applying for a pension under this title shall have served honorably from the date of his enlistment until the close of the war, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. The county judge shall reduce the evidence of witnesses examined by him to writing at the expense of the applicant at the rate of five cents per hundred words. The applicant may have such evidence written by his attorney, or such person as may be employed to secure the pension; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 6214. What Constitutes Indigency

To constitute indigency within the meaning of this Title, neither the applicant nor his wife, if married, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value One Thousand (\$1,000.00) Dollars, exclusive of homestead, and if its assessed value is not in excess of Two Thousand (\$2,000.00) Dollars and exclusive of household goods and wearing apparel; and such applicant shall not have an income, annuity, or emoluments of office or wages for services in excess of Three Hundred (\$300.00)

Dollars per year, nor the aid of a pension fund from another state of the United States. Only the indigent, under the foregoing definition, shall be entitled to a pension under this title.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 330, ch. 153, § 2.]

#### Art. 6215. Payments; Affidavit; Warrant

The payment of such pension shall be made on the first day of each calendar month to all pensioners whose application for pensions shall have been duly approved as provided by law by warrant drawn by the Comptroller on the State Treasurer, to be paid out of the money appropriated for that purpose as provided by law.

Such warrant shall be transmitted by mail to the payee thereof at his or her last known address. It shall be unlawful for any postmaster, delivery clerk, letter carrier or other postal employee to deliver any such mail to any person whomsoever if the addressee is known to have died or removed or, in the case of a widow, if known to have remarried; and it shall be unlawful for any person or persons to open any such mail-addressed to any such addressee who has died or removed, or to any such widow who has remarried, or to convert such warrant into cash; but in every such case such mail shall forthwith be returned to the Comptroller at Austin, Texas, with a statement of the reasons for so doing and if, because of death or remarriage, the date thereof, if known, and all such warrants so returned to the Comptroller shall be cancelled. In the event a veteran is receiving the pension allowed under this Act to a married veteran, and his wife dies, it shall be his duty to immediately report such death to the Comptroller and he shall not thereafter present any pension warrant for payment when the amount of the same is intended for a married veteran, but shall immediately return the same to the Comptroller.

Any person who shall knowingly violate the provisions of this Article shall be guilty of a felony and, on conviction, shall be punished by fine of not less than One Hundred Dollars (\$100.00) or by imprisonment in the county jail for not less than three months, or by imprisonment in the penitentiary for not less than one (1) year.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 686, ch. 307, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 3; Acts 1931, 42nd Leg., p. 434, ch. 262, § 4.]

#### Art. 6216. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 5

#### Art. 6217. Pensions Denied to Whom

No application shall be allowed, nor shall any aid be given or pension paid, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this title, where any such soldier or sailor deserted his command or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of a soldier or sailor who has been divorced from such soldier

or sailor, nor to any widow who voluntarily without cause abandoned such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to a soldier or sailor who served as a substitute for another, nor to the widow of a substitute.

[Acts 1925, S.B. 84.]

#### Art. 6218. Fees Limited

No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful.

[Acts 1925, S.B. 84.]

#### Art. 6219. Fees of County Judge

A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; and all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law regulating the fee of county judges. Said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension.

[Acts 1925, S.B. 84.]

#### Art. 6220. Persons Not Entitled to

No person shall, while confined in any asylum of this State, at the expense of the State, or while confined in the State penitentiary, receive a pension, and any person having been granted a pension who shall afterwards be confined in an asylum of this State, at the expense of the State, or who shall be confined in the State penitentiary shall, while an inmate of such asylum or penitentiary, forfeit his pension, and no pensioner who leaves this State for a period of over six months shall draw a pension while so absent; provided, that any person who has been granted a pension under this law, and who is thereafter admitted as an inmate of the Confederate Home or is thereafter admitted as an inmate of the Confederate Woman's Home of this State, shall thereafter be entitled to receive pension payments of the amount of one-half of the pension that such person would be entitled to receive if not an inmate of such Home.

[Acts 1925, S.B. 84.]

#### Art. 6221. Appropriation, How Allotted

On the first day of each calendar month the Comptroller shall pay to each Confederate Veteran a pension of Three Hundred Dollars (\$300) per month for each year. To each widow who is now drawing a pension, or whose application may hereafter be approved, shall be paid the sum of One Hundred and Fifty Dollars (\$150) per month for each year. All pensions shall begin on the first day of the calendar month following the approval of the application.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 330, ch. 153, § 3; Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 1;

Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 2; Acts 1931, 42nd Leg., p. 434, ch. 262, § 3; Acts 1943, 48th Leg., p. 187, ch. 108, § 2; Acts 1945, 49th Leg., p. 452, ch. 233, § 1; Acts 1949, 51st Leg., p. 534, ch. 296, § 1; Acts 1953, 53rd Leg., p. 591, ch. 233, § 1; Acts 1957, 55th Leg., p. 287, ch. 132, § 1; Acts 1957, 55th Leg., 2nd C.S., p. 191, ch. 29, § 1; Acts 1969, 61st Leg., p. 1499, ch. 450, § 1, eff. June 10, 1969.]

#### Art. 6222. Perpetuation of Evidence

Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish such right, may cause such person to go before the county judge, or any notary public of the county of his residence of such person, and make affidavit to such fact.

[Acts 1925, S.B. 84.]

#### Art. 6222a. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 2

#### Art. 6223. Statement Filed

Such affidavit shall be filed with the Secretary of State, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pensioner as may be provided by law.

[Acts 1925, S.B. 84.]

#### Art. 6224. Widow May Establish Identity

The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this State, shall be entitled to establish her identity and right to such pension in the same way and manner as herein provided for soldiers and sailors.

[Acts 1925, S.B. 84.]

#### Art. 6225. Examination of Record

The Comptroller shall examine and pass on all pension claims, keep a correct record of all approved claims, with the name, disability, service, residence and amount paid, and furnish the county judge with suitable blanks for use of claimants. He shall make a written report to the Governor on the first day of September of each year, showing the number of pensioners, the number of claims allowed for the past year, and the amounts paid, together with such other information as the Governor may ask. All records, books, claims or other matters pertaining to pensions shall be kept open to inspection and under the charge and direction of the Governor, and all rulings made by the Comptroller shall be subject to revision and change by the Governor.

[Acts 1925, S.B. 84.]

#### Art. 6226. Shall Strike From Roll

When it comes to the knowledge of the Comptroller that any person has been granted

a pension through fraud or perjury, he shall strike the name of such person from the pension roll.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4.]

#### Art. 6227. Mortuary Warrant

Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto shall die, and proof thereof shall be made to the Comptroller within forty (40) days from the date of such death by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Comptroller shall issue a mortuary warrant for an amount not exceeding Two Hundred Dollars (\$200), payable out of the Pension Fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts. (Proof of the existence and justice of such accounts to be made to said Comptroller under oath and in such form as he may require for the purpose of paying the funeral expenses of the deceased pensioners. In such cases where a warrant for the pension for the month during which the pensioner died has been issued, the same shall be returned to the Comptroller who shall mark the same "Cancelled" and file it; or if the warrant has been cashed, then the Confederate Pension Fund shall be reimbursed with the amount for which the warrant was drawn before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take place thereof.)

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 330, ch. 153, § 5; Acts 1943, 48th Leg., p. 187, ch. 108, § 3; Acts 1947, 50th Leg., p. 456, ch. 258, § 1.]

#### Art. 6227a. Siege of Bexar and Battle of San Jacinto; Pensions to Survivors and Widows

Sec. 1. There shall be paid, and there is hereby granted, an annual pension of Two Thousand, Four Hundred (\$2,400.00) Dollars to every surviving indigent soldier or indigent volunteer who was in the actual military or naval service of Texas at the time of the siege of Bexar in December, 1835, or at the time of the Battle of San Jacinto in April, 1836, and who actually participated in any battle in Texas in 1836, or who was in such actual military service for as much as six (6) weeks between the commencement of the Revolution at Gonzales in 1835 and the 1st day of January, 1837, and to every indigent surviving widow of any such soldier or volunteer so long as such widow may live.

Sec. 2. Each applicant for a pension under this law shall make application in writing for the same to the County Judge of his or her residence stating the name, age and residence of the applicant, and in the case of a widow the name of the soldier or volunteer to whom she

was married, and shall state the period of service during which said soldier or volunteer was in actual military service. Such application shall be signed and sworn to by the applicant and forwarded by the County Judge to the Comptroller of Public Accounts of the State of Texas, who shall thereon forthwith pay such pension to such applicant in monthly installments so long as he or she shall live; provided only that the Comptroller may investigate and determine the genuineness of said application, and upon being satisfied that same is genuine, he shall proceed as above provided.

[Acts 1949, 51st Leg., p. 1094, ch. 557.]

#### Art. 6228. Mothers' Aid

Any widow who is the mother of a child or children under sixteen years of age, and who is unable to support them and maintain her home, may present to the Commissioners' Court of the county wherein she has resided for the preceding two years a sworn petition for aid showing:

First:—Her name, time and place of her marriage, date of the death of her husband, or date of his confinement in the penitentiary or in an insane asylum, or date of his abandonment of her; names, sex, and the dates and places of their birth.

Second:—Her length of residence in the State, her present residence, and her residence during each of the previous five years.

Third:—All the property belonging to her and to each of her children, including any future or contingent interest she or any of them may have.

Fourth:—The efforts made by her to support her children.

Fifth:—The name, relationship, and address of each of her husband's relatives that may be known.

By "widow", as used herein, means a mother who is widowed by death or divorce, or whose husband has abandoned her for more than the two preceding years, or whose husband is confined in the penitentiary or in a State Hospital for the insane.

A copy of said petition and a notice of the time and place it will be presented to said Court shall be served on or mailed to the County Judge of said county at least five days before the time the court shall be requested in said petition to hear the same. When service is complete said Court shall examine under oath those who desire to be heard, and may subpoena witnesses; or the Court may refer said matter to a Commissioner to be appointed by it to hear said witnesses. Such Commissioner shall make a report to the Court stating the facts as proven before him. If the Court concludes that unless relief is granted the widow will be unable to properly support and educate her children, and that they may become a public charge, it may make an order directing

a monthly payment to her, out of the County Funds, for the support of such children, not more than Fifteen (\$15.00) Dollars for one child, and Six (\$6.00) Dollars additional for each other child. Such allowance shall be discontinued as to any such child who reaches the age of sixteen. The Court shall have the right to refuse any such petition, and its action in so doing shall be final. The Court shall see that any widow receiving such aid is properly caring for her children. When it is found that she is not properly caring for her children, or that she is an improper guardian for them, or when the Court finds that she no longer needs such aid, it shall thereupon revoke at any time with or without notice any order made pursuant to this Article.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 425, ch. 256, § 1.]

#### Art. 6228a. Retirement System for State Employees

##### Definitions

Sec. 1. The following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meanings:

A. "Retirement System" shall mean the Employees Retirement System of Texas as defined in Section 2 of this Act.

B. "Employer" shall mean the State of Texas.

C. "Member" shall mean any officer or employee included in the membership of the System as provided in Section 3 of this Act.

D. "State Board of Trustees" shall mean the Board, provided for in Section 6 of this Act, to administer the Retirement System.

E. "Accumulated Contributions" shall mean the sum of all the amounts deducted from the compensation of a member, and credited to his individual account in the Employees Saving Fund, together with all interest credits thereto.

F. "Earnable Compensation" shall mean the full rate of the compensation that would be payable to a member if he worked the full normal working time. In cases where compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money.

G. "Actuarial Equivalent" shall mean a benefit of equal value when computed upon a basis of such mortality tables as shall be adopted by the State Board of Trustees and interest.

H. "Actuarially Reduced" shall mean the present worth value of the reserve required to pay a service retirement allowance plan, as provided and set forth in this Act, calculated at age sixty (60) under factors established by the Board of Trustees and divided by the factor of the

attained age of the beneficiary and/or the retirement optional plan selection factor of the attained age of the beneficiary and nominee, and said reduced allowance shall be applicable in all instances where the beneficiary is less than age sixty (60) at time of retirement, or in the event of death where an optional plan selection has been made under the provisions as set forth in this Act.

I. "Occupational death" or "Occupational disability" shall mean death or disability from an injury or disease resulting directly from a specific act or occurrence determinable by a definite time and a definite place and as arising out of and in the course of State employment as the direct result of an inherent risk or hazard peculiar to the duties required in such State employment.

#### Establishment, Name, Powers and Purpose

Sec. 2. A. The Employees Retirement System of Texas heretofore established under the laws of this State is hereby continued in corporate existence, but rights of membership in such System, retirement privileges and benefits thereunder, and the management and operation of said System from the effective date of this Act shall be governed by the provisions of this Act.

B. Said System shall continue to be known as the Employees Retirement System of Texas, and by such name all of its business shall be transacted, all its funds invested, and all its cash, securities and other properties shall be held.

C. The Retirement System herein provided for shall be maintained and administered in accordance with the provisions of this Act, to provide for the payment of retirement annuities and other benefits to members and their beneficiaries.

D. The Retirement System shall have the powers and privileges of a corporation and shall have also the powers, privileges and immunities hereinafter conferred.

#### Membership

Sec. 3. A. The membership of said Retirement System as an appointive officer or employee of any department, commission, institution or agency of the State Government of the State of Texas shall be composed as follows:

All persons who on the effective date of this Act are members of the Employees Retirement System of Texas shall continue to be members of this System subject to the provisions of this Act. The following persons shall, however, not be eligible for participation in the Retirement System:

1. Persons who are covered by the Teachers Retirement System or the Judicial Retirement System of the State of Texas.

2. Persons employed on a piecework basis or operators of equipment or drivers of

teams whose wages are included in the rental rate paid the owners of said equipment or team.

3. Employees who are employed in a position normally requiring less than nine hundred (900) hours per year.

Notwithstanding any other provisions of this Act, it is expressly provided herein that the Texas Public Employees Association of Texas shall be designated as a State agency, for retirement purposes only. This Association was formed and supported by contributions of employees of the State of Texas for the purpose of increasing efficiency in the State Government and therefore it is further expressly provided herein that the employees of this Association shall be members of the Retirement System and as such shall be governed by the same restrictions, privileges, and benefits as other employee members.

B. The membership of said Retirement System as an elective State official of the State of Texas shall be composed as follows:

1. The membership of said Retirement System shall be composed of any elective State official or appointee in an elective office of the state, including all elected or appointed members of the State Legislature, and District Attorneys receiving salaries paid by the State from the State General Revenue Fund, but shall not include any elective official in the Judicial, Education, District, or County, of the State of Texas other than those expressed eligible as provided herein.

2. Any person who on January 1, 1963, is an elective State official as defined herein, shall, before October 1, 1964, execute an election to become a member of the Retirement System as of January 1, 1963, or election not to become a member of the Retirement System. This election to become a member or not to become a member shall be filed with the State Board of Trustees on a form provided by the Board. The election not to become a member will include a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the System. Contributions shall be due and payable for the month of January, 1963, and each month thereafter, and membership service shall begin as of January 1, 1963.

3. Any person who becomes an elective State official by reason of election or appointment after January 1, 1963, shall within six (6) months from the month in which he takes the oath of office or October 1, 1964, whichever date is later, execute an election to become a member of the Retirement System or not to become a member of the Retirement System. This election to become a member or not to become a member shall be filed with the State Board of Trustees on a form pro-

vided by the Board. The election not to become a member will include a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the System. Contributions shall be due and payable for the month in which he takes the oath of office, and each month thereafter, and membership service shall begin with the first day of the month in which he takes the oath of office.

4. A person who was an elected state official and who completed an entire term of office as a member of the 57th Legislature is entitled to become a member of the Retirement System and to receive the service and benefits of the Retirement System. Before September 1, 1965, he must choose whether to become a member of the Retirement System.

C. 1. Any person who becomes an appointive officer or employee on or after the effective date of this Act shall become a member of the Retirement System on the first day of employment as a condition of employment. The term appointive officer or employee shall mean a person paid a monthly or hourly salary from the funds of the State and the position occupied by such person must be one that subjects that person to the laws, rules and regulations of the State as applicable to its employees. Contributions by such a member under this Act shall begin with the first payroll period in which he is employed and creditable service shall then begin to accrue. Any person elected or appointed to an elective office shall become a member of the Retirement System in the same month in which he takes the oath of office as a requirement for filling such elective position, if he elects to become a member of the Retirement System.

2. Upon verification by the Employees Retirement System, any contributing member of this System may claim and receive credit as an elective or appointive officer or employee for service not previously creditable because of a waiting period required prior to September 1, 1958. Applicable contributions and State matching shall be required for any such service. Members who fail to establish credit for such service within 12 months after first becoming eligible to claim such service, shall be deemed to have waived such service. Payment thereafter shall be subject to the applicable penalty interest provision of this Act.

D. Should any member who was an appointive State officer or employee in any period of six (6) consecutive years after becoming a member be absent from service more than sixty (60) consecutive months, he would automatically terminate membership if he has less than fifteen (15) years creditable service; if an elective State official eight (8) years; or should any member withdraw his accumulated contributions, or become a beneficiary, or upon death, he shall thereupon cease to be a member; however, during the time the United

States was or is involved in organized conflict whether in a state of war or in a police action involving conflict with foreign forces, or for reason of a crisis within this country, and within a period of twelve (12) months thereafter, time spent by a member of the Employees Retirement System (1) in the Armed Forces of the United States of America and their auxiliaries and/or in the Armed Forces Reserve of the United States of America and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall not be construed as absent from service insofar as the provisions of this Act are concerned. The State Board of Trustees shall determine and by order define the period or periods which shall be recognized as involving organized conflict or crisis within the contemplation of this Act.

E. Any person who was an elective State official and who has served in the Legislature of Texas but whose last elective service occurred prior to January 1, 1963 and who has not less than eight (8) years creditable service may become a member of the Employees Retirement System by paying into such System in a lump sum payment an amount for each year of creditable service. The amount required shall be computed at the rate of six per cent (6%) per year of the yearly salary being paid to members of the Legislature at the time the person elects to establish such service. Credit for such service shall be granted only after payment of all contributions, interest and fees required. Credit for service granted may not thereafter be simultaneously granted by any other retirement system. Such person must be a contributing member of the System at the time he establishes credit for such service and shall pay interest at the rate of ten per cent (10%) per year dating from the time such service was performed. Interest shall be credited to the State Accumulation Fund. State matching contribution from the State shall be provided in the same manner as set forth in the applicable provisions of the Employees Retirement Act.

#### Creditable Service

Sec. 4. A. Creditable service shall be the total of prior service plus membership service. For appointive officers and employees of the State, prior service shall be granted for eligible service rendered prior to the establishment of the Retirement System on September 1, 1947, and membership service shall be granted for eligible service rendered on and after September 1, 1947. Service as an elected State official as defined in this Act may be claimed as creditable service as an appointed officer or employee.

Each appointive officer or employee, as defined in Section 3 of this Act, who becomes a member and contributes as such for a period of twenty-four (24) months, shall file a detailed

statement of all Texas service for which he claims credit.

B. Creditable service shall be the total of prior service plus membership service. For elective State officials, prior service shall be granted for eligible service rendered prior to January 1, 1963, and membership service shall be granted for eligible service rendered on and after January 1, 1963.

Under such rules and regulations as the Board of Trustees shall adopt, each elective State official who was employed as defined in Section 3 of this Act, at any time prior to January 1, 1963, as an elective State official, who on that date or thereafter becomes an elective State official shall file a detailed statement of all service as an elective State official rendered by him for which he claimed credit.

It is expressly provided herein that any service allowed under the provisions of this Act as a member of the Legislature of Texas, for retirement purposes, either as an appointive officer or employee or as an elective State official shall be computed on the basis of earnable compensation at the rate of Four Thousand, Eight Hundred Dollars (\$4,800) per annum.

It is expressly provided in this Act that creditable service of any elective State official may be transferred by him upon his application to the Board of Trustees to coverage under the requirements and benefits for appointive officers or employees as provided in this Act. Provided, however, that before such transfer can be made, such elective State official must pay all such contributions and fees required of an appointive State officer or employee prerequisite for such benefits. It is also provided that if such transfer is filed by an elective State official and this election is made, that State matching contributions from the State shall be provided in the same manner as set forth in the provisions of the Employees Retirement Act herein.

It is expressly provided in this Act that any elective State official may claim such service as an appointive State officer or employee, to be included with his elective service, for benefits under this Act, and that further, such service must be claimed by the elective State official and after verification by the State Board of Trustees shall be granted.

C. The State Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one (1) year of service, but in no case shall more than one (1) year of service be creditable for all service in one (1) year.

D. Subject to the above restrictions and to such other rules and regulations as the State Board of Trustees may adopt, the State Board of Trustees shall verify and adjust, as soon as practicable after the filing of such statements of service, the service therein claimed.

E. Upon adjustment and verification of the statement of service, the State Board of Trustees shall issue prior service certificates certi-

fying to each member the length of Texas service rendered prior to the date of the establishment of the Retirement System, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within one (1) year from the date of issuance or modification of such certificate, request the State Board of Trustees to modify or correct his prior service certificate. When membership ceases, such prior service certificate shall become void. Should he again become a member, such person shall enter the System as a member not entitled to prior service credit except as provided elsewhere in this Act.

F. Each member, as defined in this Act, who has heretofore withdrawn his contributions and cancelled his accumulated creditable service for retirement purposes, may, if he returns to State employment and continues as such for a period of twenty-four (24) months, or if an elective State official, upon taking the oath of office, be entitled to deposit in the Retirement System in a lump sum payment the amount withdrawn plus interest of five per cent (5%) per annum from the date of withdrawal to the date of redeposit, plus any membership fees due, and have his creditable service reinstated for retirement purposes; however, it is provided that the amount withdrawn by the person and deposited with the System shall be placed in his individual account in the Employees Saving Fund and the five per cent (5%) per annum interest shall be placed in the State Accumulation Fund. The amounts to be deposited shall be determined in each case by the Employees Retirement System and in no event shall any such person be granted retirement upon such former service credits until the amount so determined shall have been paid in full.

Each member, as defined in this Act, who is eligible to claim creditable service not previously established, shall have the privilege of electing to receive credit for all previous creditable State service provided such person shall deposit with the Employees Retirement System in a lump sum all required membership fees, contributions and interest with respect to each of the years and months employed dating from the date such service was performed provided that the contributions shall be equal to six per cent (6%) of the applicable salary rate for each month of service but not less than Eighteen Dollars (\$18.00) per month, together with interest from the date of such service at the rate of ten per cent (10%) per annum, and provided further, that the required contributions shall be placed in his individual account in the Employees Saving Fund, and the interest shall be placed in the State Accumulation Fund. The amounts to be deposited shall be determined in each case by the Employees Retirement System and in no event shall any

such person be granted retirement upon such former service credits until the amounts so determined shall have been paid in full, and provided further, that the total of all such contributions shall be matched by an equal sum by the State of Texas in the manner and from the funds as now provided in the State Employees Retirement Act. Interest payments provided herein shall be calculated on the basis of the State fiscal year.

G. A member of the Employees Retirement System who has served on active Federal duty as a member of the Armed Forces of the United States of America during the time the United States was or is involved in organized conflict, whether in a state of war or a police action involving conflict with foreign forces, or for reason of a crisis within this country, and within a period of twelve (12) months after the end of the conflict, and who has been or is relieved from active military service under conditions other than dishonorable shall be entitled to apply for and receive creditable service, not to exceed sixty (60) months under this Act as hereafter provided. A member of the System currently contributing as a member of the Legislature shall be allowed two (2) years retirement credit for having served at least eighteen (18) months on active Federal duty military service.

Notwithstanding any other provision herein, no person, otherwise eligible for credit for military service shall be eligible for such credit if such person shall be receiving or hereafter receives any military retirement provided by any Federal law or regulation or Federal retirement Act, for at least twenty (20) years' active duty or the equivalent thereof. Any person applying for credit authorized by this subsection, shall pay to the Employees Retirement System a sum equal to the number of full months in actual service for which credit or additional credit is sought, times the rate of his first contribution to the System for his first full month of State employment following the date of release from active Federal duty military service provided, however, that such contribution shall not be less than Eighteen Dollars (\$18.00) per month. A member of the Legislature who applies for two (2) years' military service credit under the provisions of this subsection shall pay to the Employees Retirement System an amount equal to twenty-four (24) times the rate of his first contribution to the System as a member of the Legislature, provided, however, that such contribution shall not be less than Twenty-four Dollars (\$24.00) per month. Such contributions made for military retirement credit shall be deposited in the member's individual account in the Employees Saving Fund. State matching in a sum equal to the amount of the member's contribution shall be paid to the Employees Retirement System from the fund from which the member received his compensation for his first full month of State employment following the date of his release from active Federal duty mili-

tary service. Such matching money shall be deposited in the State Accumulation Fund. Members who (1) were eligible to establish credit for military service before September 1, 1972, but failed to do so, and (2) all other eligible members who do not establish such credit before September 1, 1974, or within twelve (12) months after becoming members, whichever is later, shall pay interest on the amount due for military service credit at the rate of ten per cent (10%) per year dating from the date of first eligibility. Such interest shall be deposited in the State Accumulation Fund. Members shall furnish to the System all necessary data including verification of any creditable military service performed by the member, as provided for herein, in such manner and at such time as determined by the Board of Trustees so as to permit the Employees Retirement System to determine the amount of State money required to support and fund the actuarial cost of such military service previously established as well as service to be established in the future. The State Board of Trustees shall determine and by order define the period or periods which shall be recognized as organized conflict or crisis within the contemplation of this Act.

Military service credit shall be included in determining all death benefits, eligibility for selection of an optional death benefit plan, and in calculating occupational disability retirement benefits. Military service credit shall be included in calculating service retirement and nonoccupational disability retirement benefits only if the member at the time of retirement has ten (10) years of creditable State service as an appointive officer or employee exclusive of military service credit, or six (6) years of creditable service as an elective State official exclusive of military service credit.

H. Any contributing member of the System, upon completing the required number of months of service necessary to establish previous service, as provided for in this Act, shall be eligible to claim credit for service as defined in this subsection. The Employees Retirement System shall verify all such service claimed under the provisions of this subsection. Credit for all such service shall be granted only after payment of all contributions for all such service plus interest, and fees required. A member claiming service under this subsection, shall pay interest at the rate of 10% per year dating from the date such service was performed. Interest shall be credited to the State Accumulation Fund. State matching contributions from the State shall be provided in the same manner as set forth in applicable provisions of the Employees Retirement Act. The Employees Retirement System shall not grant credit for any such service that is simultaneously credited by any other retirement system or program established under or governed by the laws of this State. Credit for service granted by the Employees Retirement System may not thereafter be simultaneously

credited by any other system or program. Annuities for such service shall be based upon the provisions of the Employees Retirement Act with respect to annuities payable to elective officials or to employees and appointive officials whichever is applicable. Members who are eligible may claim credit for the following service:

1. Service in the State of Texas as a Criminal District Attorney or as a County Attorney.

Contributions required of members claiming service as a Criminal District Attorney or as a County Attorney shall be based upon State salaries paid to District Attorneys during the periods of time for which such service is claimed, provided, however, the minimum contribution shall not be less than Twenty-four Dollars (\$24.00) per month.

2. Service as a Board member of a statutory Texas State department, agency, or commission having statewide jurisdiction, the employees of which, under requirements of law, are members of the Employees Retirement System; provided that such service was not in a full time salaried position but was subject to confirmation by the Senate of Texas. It shall be provided further that a minimum of 24 months of such service shall qualify a Board member to become a member of the System and be eligible to establish such service upon the effective date of membership in the System.

Contributions required of eligible Board members shall be based upon the highest salary paid to any officer or employee of such department, agency, or commission during the time for which such credit is claimed.

3. Judicial service as a commissioner, judge, or justice of a District Court, Criminal District Court, Court of Civil Appeals, Court of Criminal Appeals, or Supreme Court of this State.

Contributions required of members claiming judicial service under this subsection shall be based upon the contribution rate and amount of salary applicable under the Judicial Retirement System during the periods of time for which such service is claimed.

4. Service as a District Clerk performed prior to service as Clerk of the Supreme Court of Texas or Clerk of the Court of Criminal Appeals, provided that not more than one year of service as a District Clerk shall be credited for each two years of service as Clerk of the Supreme Court or Clerk of the Court of Criminal Appeals. Contributions required of members claiming service as a District Clerk shall be based upon the salary paid to the Clerk of the Supreme Court or to the Clerk of the

Court of Criminal Appeals at the time service as District Clerk was performed, provided, however, the minimum contribution shall not be less than Eighteen Dollars (\$18.00) per month.

5. Any person who became a member of the Employees Retirement System prior to September 1, 1965, under the provisions of Senate Bill No. 217, Chapter 116, Acts of the 59th Legislature, Regular Session, 1965,<sup>1</sup> may claim as prior service any creditable service in State employment performed prior to January 1, 1963, and if retired prior to the effective date of this Act, may make application to the retirement system for recomputation of his annuity to include such service; provided, however, any increased annuity shall be payable only for the month in which such application is received and thereafter.

<sup>1</sup> Added subd. 4 to § 3, subsec. B, of this article.

I. [Blank]

J. Repealed by Acts 1973, 63rd Leg., p. 873, ch. 394, § 8, eff. Sept. 1, 1973.

#### Benefits

Sec. 5. A. Service Retirement Benefits for Appointive State Officers or Employees.

1. Any member may upon written application to the State Board of Trustees, set the date of his retirement which shall be subsequent thereto, provided that such retirement shall be effective only on the last day of a calendar month and not more than ninety (90) days following such written notice, and provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed ten (10) or more years of creditable service. It is provided further, however, that a member who has completed ten (10) or more years of creditable service as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, Parks and Wildlife Department, Alcoholic Beverage Commission, or as a custodial officer of the State Board of Corrections of the State of Texas and who has attained the age of fifty-five (55) years shall be eligible for retirement.

2. Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least fifteen (15) years of creditable service and shall become entitled to a service retirement allowance upon his attainment of the age of sixty (60) years, or at his option, at any date subsequent to his attainment of said age provided that such member was then living and had not withdrawn his contributions.

3. Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least thirty (30) years of creditable service as an employee or appointive officer, or twelve (12) years of creditable service as an elective official and shall become entitled to a service retirement upon attaining the age of fifty-five (55) without actuarial reduction because of age. Any person previously retired with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more years of creditable service as an elective official and who at the time of retirement was at least fifty-five (55) years, but less than sixty (60) years of age, and whose service annuity was actuarially reduced, may, on and after the effective date of this Act, apply in writing for recomputation of his annuity so as to restore the reduction previously imposed, such restoration to be effective only with respect to annuity payments due for the month in which such application is received and thereafter. Employee and appointive officer members may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least twenty-five (25) years of creditable service and shall become entitled to a service retirement allowance provided that such member has attained the age of fifty-five (55) and provided further that his retirement allowance shall be actuarially reduced from age sixty (60) to the earlier retirement age. It is further provided that a member who has completed twenty (20) or more years of creditable service as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, Parks and Wildlife Department, Alcoholic Beverage Commission, or as a custodial officer of the State Board of Corrections of the State of Texas, may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance shall be actuarially reduced from age fifty-five (55) to the earlier retirement age.

4. A custodial officer of the State Board of Corrections shall be defined as a member whose normal duties with the Texas Department of Corrections require that he supervise and have direct contact with inmates of that institution.

**B. Allowance for Service Retirement.**

1. The allowance for service retirement shall be computed on the basis of the average monthly compensation of the member for the sixty (60) highest months of compensation during the last one hundred

and twenty (120) months of creditable service. The rate of benefits shall be based upon the following schedule:

First ten (10) years of service	-----1.35% per year
Second ten (10) years of service	-----1.60% per year
Third ten (10) years of service	-----1.70% per year
All subsequent years	-----1.90% per year

It is provided, however, that if the service retirement standard annuity calculated on the basis of the Rate of Benefits set forth herein is less than Sixty-five Dollars (\$65.00) per month, then the benefits shall be increased to equal the sum of Sixty-five Dollars (\$65.00) per month.

It is expressly provided that any service or disability annuity or allowance under the provisions of this Act shall begin with the first day of the month following the effective date of retirement and shall be paid in monthly installments and shall cease on the day the beneficiary or person dies who is receiving such an annuity or allowance except as otherwise provided in this Act.

2. It is expressly provided that no annuity being paid to a beneficiary of the Retirement System who retired prior to September 1, 1973, shall be decreased by the provisions of this Act.

**3. Optional Allowances for Service Retirement.**

Any member may elect to receive a standard annuity payable throughout his life, with the provision that such election shall not be effective in case he dies during the first month after the effective date of his retirement in which case he shall be considered as an active member at the time of his death. In lieu of a standard annuity he may elect to receive the actuarial equivalent thereof as a reduced annuity payable throughout his life with the provisions that:

Option (1) Upon his death, his reduced annuity shall be continued throughout the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (2) Upon his death, one half ( $\frac{1}{2}$ ) of his reduced annuity shall be continued through the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (3) In the event of his death before sixty (60) monthly payments of such annuity have been made, such

payments shall be continued to his nominee designated in writing, or to his estate, until the remainder of the sixty (60) payments have been made; or

Option (4) In the event of his death before one hundred and twenty (120) monthly payments of such annuity have been made, such payments shall be continued to his nominee designated in writing, or to his estate, until the remainder of the one hundred and twenty (120) payments have been made; or

Option (5) Such other benefit arrangement as may be approved by the Board of Trustees and the whole of which benefit is certified by the Actuary to constitute the reduced actuarial equivalent of the retirement benefit to which the member is entitled.

#### 4. Re-employment of Retired Appointive Officers or Employees.

Any retired appointive officer or employee may return to state employment as an appointive officer or employee, on a temporary basis, provided, however, that such reemployment shall not be for a longer period than six (6) months within any one (1) year. Any retired appointive officer or employee reemployed by the state on a part-time or consulting basis may work without loss of benefits under the Employees Retirement System. It is provided that in the event a retired state appointive officer or employee resumes temporary employment with a state department, commission, institution or agency, he shall notify the Retirement System in writing prior to resuming actual employment, and the head of any state department, commission, institution or agency of the state shall notify the Retirement System in writing before employment of a retired state appointive officer or employee and furnish the Retirement System the name of said retired appointive officer or employee and the dates of employment. After a reemployed, retired appointive officer or employee has worked six (6) months in any one (1) year, retirement benefit payments that would otherwise have been paid to said member shall be suspended and shall be resumed when said member leaves said employment, provided that the annuity payments as suspended shall be paid into the State Accumulation Fund. For the purposes of the six (6) months per year limitation on reemployment, employment for any part of a month shall constitute a full month. It is provided further, that if the retired member had elected to receive an annuity in a guaranteed payment for a certain number of years or months after retirement, that the time so spent in state employment over six

(6) months within any one (1) year by such retired member after the initial or original retirement shall count as time within said certain number of years or months, the same as if said retired member had not returned to state employment, provided that said retired member temporarily employed shall not contribute to the Retirement System during such reemployment, and the Retirement Plan in effect at the time of his original retirement shall remain unchanged.

5. Notwithstanding any other provisions of this Act, it is further provided that a member who has accumulated thirty (30) or more years of creditable service as a member of the Employees Retirement System of Texas and who has service credit of not less than eight (8) years in one or more of the following named offices of the State Legislature: House Administrative Officer, House Chief Clerk, House Journal Clerk, House Enrolling and Engrossing Clerk, House Calendar Clerk, House Sergeant at Arms, Secretary of the Senate, Senate Calendar Clerk, Senate Journal Clerk, Senate Enrolling and Engrossing Clerk, and Senate Sergeant at Arms shall have his service retirement standard annuity computed on a rate of benefit basis of two percent (2%) per year of total creditable service. It is further provided that the service retirement standard annuity so computed shall not exceed eighty percent (80%) of the average monthly compensation of the member for the sixty (60) highest months of compensation during the last one hundred and twenty (120) months of creditable service.

#### C. Disability Retirement Benefits for Appointive Officers or Employees.

1. Upon the application of a member or his employer or his legal representative acting in his behalf, any member, under age sixty (60), who has had ten (10) or more years of creditable service may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application, on a nonoccupational disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

Upon the application of a member or his employer or his legal representative acting in his behalf, any member regardless of age and regardless of creditable service may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application on an Occupational Disability Retirement Allowance,

provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, as such incapacity is likely to be permanent, and such person should be retired.

2. Allowance on Disability Retirement—Nonoccupational, for Appointive Officers or Employees.

Upon retirement for disability (nonoccupational) a member shall receive a service retirement allowance if he has attained the age of sixty (60) years, otherwise, he shall receive a disability retirement allowance computed at one and one-half (1½%) per cent per year of service, multiplied by the average monthly compensation for the sixty (60) highest consecutive months during his last preceding one hundred and twenty (120) months of creditable service, provided, however, that in no event will his disability retirement allowance be less than thirty (30%) per cent of his average compensation so computed, nor his maximum benefit exceed sixty (60%) per cent of his average compensation so computed.

It is provided, however, that if the disability retirement annuity calculated on the basis of the Rate of Benefits set forth herein is less than Seventy-Five Dollars (\$75.00) per month then the benefits shall be increased to equal the sum of Seventy-Five Dollars (\$75.00) per month.

It is further provided, however, that any member who retired on disability prior to September 1, 1958, will receive an increase of fifteen (15%) per cent or if less than Seventy-Five Dollars (\$75.00) per month then the benefits shall be increased to equal the sum of Seventy-Five Dollars (\$75.00) per month.

It is expressly provided that all non-occupational disability retirements previously awarded and in effect at the time this Act becomes effective, shall be reviewed, and the benefits of this Act shall be applied to each retirement; provided, however, that no person shall receive an annuity less than that being paid at the effective date of this Act.

3. Allowance on Occupational Disability Retirement for Appointive Officers or Employees.

Upon retirement for occupational disability a member shall receive a disability retirement allowance computed at one and one-half (1½%) per cent per year of creditable service multiplied by the monthly rate of compensation being paid to the member at the time of the disabling injury or disease; provided, however, that in no event shall the disability retirement allowance be less than thirty (30%) per cent nor more than sixty (60%) per cent of the monthly rate of compensation.

It is provided, however, that if the occupational disability retirement annuity calculated on the basis of the Rate of Benefits set forth herein is less than Seventy-Five Dollars (\$75.00) per month then the benefits shall be increased to equal the sum of Seventy-Five Dollars (\$75.00) per month.

It is expressly provided that all occupational disability retirements previously awarded and in effect at the time this Act becomes effective, shall be reviewed, and the benefits of this Act shall be applied to each retirement; provided, however, that no person shall receive an annuity less than that being paid at the effective date of this Act.

4. Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the State Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or any other place mutually agreed upon, by a physician or physicians designated by the State Board of Trustees. Should any disability beneficiary who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the State Board of Trustees, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the State Board of Trustees.

5. Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, or that such disability beneficiary is engaged in or is able to engage in gainful occupation, and should the State Board of Trustees by a majority vote concur in such report, then the amount of his allowance shall be discontinued or reduced to an amount by which the amount of the last year's salary of the beneficiary, as a member, exceeds his present earning capacity. Should his earning capacity be later changed, the amount of his allowance may be further modified; provided that the revised allowance shall not exceed the amount of the allowance originally granted, nor shall it exceed an amount which, when added to the amount earnable by the beneficiary, equals the amount of his compensation for the last year prior to retirement.

6. Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance

shall cease, he shall again become a member of the Retirement System, and the balance of his retirement reserve shall be transferred to the Employees Saving Fund and to the State Accumulation Fund, respectively, in proportion to the original sum transferred to the Retirement Annuity Reserve Fund at retirement. Upon restoration to membership, any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. Should a disability beneficiary die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such beneficiary's accumulated contributions at the time of disability retirement exceed the annuity payments received by such beneficiary under his disability allowance, if any such excess exists, shall be paid from the Retirement Annuity Reserve Fund to such beneficiary if living; otherwise, such amount shall be paid as provided by the laws of descent and distribution of Texas unless the beneficiary has directed such amount to be paid otherwise. If the member is granted a nonoccupational disability allowance while employed by the state or on compensation insurance or temporary sick leave and dies while receiving this nonoccupational disability allowance and is survived by a spouse at the date of his death, and if there is no surviving spouse, then only to the guardian of the dependent minor children will be granted a death benefit as set forth under Section 5, Subsection E, Paragraph 2, a, b, c, or d, whichever is applicable. Such benefit granted would be paid from the State Accumulation Fund.

It is provided, however, that if the disability beneficiary has been retired for occupational disability and should such beneficiary die while receiving such occupational disability benefits, an amount equal to the amount by which such beneficiary's accumulated contributions at the time of occupational disability retirement exceeds the annuity payments received by such beneficiary under his occupational disability allowance, if any such exists, shall be paid as provided by the laws of descent and distribution of Texas, unless the beneficiary has directed such amount to be paid otherwise, and provided further, that this refund as set forth herein shall be made only if the cause of the death of the beneficiary is from or connected with the occupational injury or disability resulting in the occupational disability retirement; otherwise, the provisions above set forth in this paragraph shall apply.

It is further provided, that if the beneficiary dies while receiving an occupational disability allowance and he is survived by a spouse and if there is no surviving spouse then only to the guardian of the dependent minor children, then an additional death benefit will be paid an amount equal to the full annual salary before the deceased appointive officer or employee at the rate of pay he was receiving at the date he was granted occupational disability. This additional benefit payment would be paid from the State Accumulation Fund. The Board of Trustees shall determine if the death is an occupational death and its decision shall be final.

7. It is expressly provided herein that an appointive officer or employee who applies for Occupational Disability Retirement benefits shall be required to furnish the Board of Trustees all information and data requested by the Board of Trustees and provided further that the head and all employees of the department in which the member applying for Occupational Disability Retirement is employed shall be required to furnish all information and data concerning the application for Occupational Disability Retirement of the member and further, the Board of Trustees shall have the right to inquire and require any additional data concerning the application for occupational disability in order that the Board may have all information necessary to act upon said application for occupational disability. In the event that such information is withheld or denied, then the Board of Trustees may refuse to accept the application for Occupational Disability Retirement and shall consider the application only for Nonoccupational Disability Retirement Benefits. It is expressly provided herein that the Board of Trustees shall act upon the facts and its decision regarding Occupational Disability Retirement herein applied for, shall be final.

#### D. Service Retirement Benefits for Elective State Officials.

1. Any member may retire upon written application to the State Board of Trustees, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution of and filing thereof, he desires to be retired, provided that retirement will be effective only as of the last day of the calendar month, and provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed eight (8) or more years of creditable service, provided, however, any member who has completed at least twelve (12) years of creditable service shall be entitled to a service retirement provided such member has attained the age of fifty-five (55).

The Maximum Service Retirement allowance shall be computed at the rate of six per cent (6%) per year of the monthly salary paid to duly elected members of the Legislature of the State of Texas on date of retirement and as such monthly salary may be adjusted from time to time thereafter. The Maximum Service Retirement allowance so computed shall not exceed sixty per cent (60%) of such salary or Nine Hundred Dollars (\$900) whichever is the greater of the two.

It is expressly provided that any annuity or allowance payable under the provisions of this Act shall begin with the last day of the month following the effective date of retirement and shall be paid in monthly installments and shall cease with the last day of the month preceding the month in which the beneficiary or person dies who is receiving such an annuity or allowance as provided in this Act.

It is further provided, that the Rate of Benefits scheduled as provided for by this Act shall be applied to all service retirement annuities payable on the effective date of this Act and previously awarded under the laws governing the Employees Retirement System as effective September 1, 1963, or as amended thereafter.

2. Any member who has accumulated a minimum of eight (8) years of creditable service as provided herein and who does not withdraw his account from the Retirement System prior to the attainment of age sixty (60) shall remain an active member and shall be entitled to a service retirement allowance upon attaining age sixty (60).

It is further provided, that upon the death of any member, with not less than eight (8) years of creditable service under the provisions of this Act, one-half ( $\frac{1}{2}$ ) of the total service retirement allowance provided herein to which such member is entitled or would have been entitled at age sixty (60), or at the time of his death, whichever is later, shall be paid to the surviving spouse at the time of the death of such member, provided, however, that this provision shall not be applicable in the event the member was eligible to select or had selected a Death Benefit Plan for a monthly annuity to be effective in the event of death prior to retirement as provided herein. Occupational Death Benefit provisions of this Act shall also be applicable to Elective State Officials.

Prior to retirement any contributing member with ten (10) or more years creditable service, and any noncontributing member with twelve (12) or more years creditable service, may select a Death Benefit Plan and designate a nominee to receive a reduced monthly annuity either for life, or for a ten (10) year guaranteed period, to become effective and payable, in lieu of the refund of the member's con-

tributions, to such nominee beginning the month following the death of such member. If the qualified member dies without having made such Death Benefit Plan selection, the surviving spouse may choose the plan in the same manner as if the member had completed the selection and, further provided, that only the surviving spouse may make such a selection and if there is no surviving spouse, then the selection may be made only by the guardian of the dependent minor children and if there be no dependent minor children then the provisions of Paragraph 2, Subsection E of Section 5, pertaining to death benefits shall apply upon death of the member. Application for such plan shall be on forms prescribed by the State Board of Trustees. The reduced benefits shall be computed in the same manner as for a member's service retirement as provided elsewhere in this Act. The ages of the member and the nominee at the date of the member's death shall be used in determining the reduced annuity. The plan selected shall remain in effect until amended or superseded by the member's retirement selection.

3. It is provided herein that for service retirement Elective State Officials shall be eligible to select any of the optional allowance plans as provided for appointive officers and employee members, as set forth in Section 5, Subsection B, Paragraph 3, of this Act.

4. Disability Retirement Benefits for Elective State Officials.

Upon the application of a member or his employer or his legal representative acting in his behalf, any member under age sixty (60), who has eight (8) or more years of creditable service, or if Occupational Disability regardless of age or length of service, may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application, provided the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

The benefit to be paid by the Retirement System shall be the same as that set forth for service retirement without reduction for reason of age, provided, however, that no optional plan may be selected, and further provided, that should the disabled retired member die before the full amount of contributions standing to his credit shall have been paid, then the remainder of his account shall be paid to the beneficiary of such disabled retired member. It is provided herein that additional provisions after disability retirement applicable for appointive officers and

employee members as set forth in Section 5, Subsection C, Paragraphs 4, 5, and 6, will be applicable also to disability retirement for Elective State Officials. Occupational Disability Benefit shall be based on the member's actual creditable service or eight (8) years, whichever is greater.

E. Return of Accumulated Contributions.

1. Should a member with less than fifteen (15) years of creditable service cease to be employed, except by death or retirement, under the provisions of this Act he shall be paid in full the amount of accumulated contributions standing to the credit of his individual account in the Employees Saving Fund.

2. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise.

If such a member dies before retirement, an additional death benefit will be paid to the designated nominee if living, otherwise to the estate of the deceased member. It is expressly provided that such additional death benefit herein will be paid only if the member dies and is actively employed by the state or on disability retirement, compensation insurance or temporary sick leave on the date of his death. Such payments of the additional death benefit will be made from the State Accumulation Fund as follows:

(a) At the death of such a member who has less than twenty (20) years of creditable service, an amount equal to five (5%) per cent of the amount standing to the credit of his account in the Employees Saving Fund, shall be paid for each full year of creditable service. Such amount shall be paid to his last named nominee or beneficiary, if living, and otherwise to his estate.

(b) At the date of the death of the member whose death benefit plan could not be effective or who had not chosen an optional death benefit plan as provided for members credited with twenty (20) years of service or more, the surviving spouse may choose an option plan in the same manner as if the member had completed the selection. If there is no surviving spouse, the Executor of the estate of the deceased member may choose the option plan for the benefit of the estate heirs.

3. Provided, however, in the event that the death of the appointive officer or employee member is an occupational death, there shall be refunded, in addition to any other benefit or payment authorized by this Act, an amount equal to the full annual salary of the deceased appointive

officer or employee member based upon his rate of pay at the time of death, but such additional refund shall be paid only to the surviving spouse, and if no surviving spouse, then payment shall be made to the guardian of the dependent minor children, if any, and provided that such additional death benefit shall be paid from the State Accumulation Fund. The Board of Trustees shall determine if the death is an occupational death, and its decision shall be final.

4. After such cessation of service if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his heirs. If the contributor or his heirs cannot be found after seven (7) years, his accumulated contributions shall be forfeited to the Retirement System and credited to the State Accumulation Fund.

5. It is provided that any member who has completed twenty (20) years of creditable State service in Texas, may by written designation in such form as the Board of Trustees may prescribe, select a nominee and an optional allowance for retirement as set forth under the preceding Section 5, Subsection B, Paragraph 3, providing for optional allowances for service retirement, and which selection shall become effective and payable to such nominee beginning with the month following the month in which the member died, provided, however, if such a member having completed twenty (20) years of State service in Texas failed to make a selection in the event of his death then a surviving spouse may choose the option plan in the same manner as if the member had completed the selection and, further provided, that only the surviving spouse may make such a selection and if there is no surviving spouse, then the selection may be made only by the guardian of the dependent minor children and if there be no dependent minor children, then the provisions of the preceding Subsection E, Paragraph 2, pertaining to death benefits shall apply upon death of the member.

6. Repealed by Acts 1971, 62nd Leg., p. 1359, ch. 359, § 8, eff. Sept. 1, 1971.

Annuity Increase; Continuance of Death Benefit Plan

Sec. 5-1. Notwithstanding any other provisions of this Act, annuities payable as of August, 1973, with respect to appointive officers and employees who retired prior to September 1, 1973, shall be increased by the following percentage rates:

EFFECTIVE DATE OF RETIREMENT	RATE OF INCREASE
September 1, 1972, through August 31, 1973	4%
September 1, 1971, through August 31, 1972	6%
Prior to September, 1971	8%

It is provided, however, that if the standard annuity calculated under the provisions of Section 5 of the State Employees Retirement Act is less than Sixty-five Dollars (\$65.00) per month, it shall be adjusted to whichever is greater of (a) Sixty-five Dollars (\$65.00) per month, or (b) the amount derived by the percentage adjustment herein provided.

Notwithstanding any other provisions of this Act, a member retiring on disability after September 1, 1973, shall have his annuity calculated on the basis of one and six-tenths (1.6%) per cent per year, provided, however, that in no event will his disability retirement annuity be less than thirty-two (32%) per cent of his average compensation so computed, nor his maximum benefit exceed sixty-three (63%) per cent of his average compensation so computed. It is further provided that if the disability retirement annuity calculated under the provisions of Section 5 of the Act is less than Ninety-five Dollars (\$95.00) per month, it shall be adjusted to whichever is the greater of (a) Ninety-five Dollars (\$95.00) per month, or (b) the amount derived by the percentage increase adjustment herein provided.

Any death benefit plan selected by a member with twenty (20) or more years of creditable service shall remain in effect during such time as such member may be receiving disability retirement benefits; and upon his death while receiving such benefits, his designated beneficiary shall receive monthly annuities in accordance with the plan selected.

#### Administration

##### Sec. 6. A. State Board of Trustees.

1. The General Administration and responsibility for the operation of the Retirement System and for making effective the provisions of the Act are hereby vested in a State Board of Trustees which shall consist of six (6) members as follows:

(a) Three (3) members who shall be appointed with the advice and consent of the Senate as follows:

(1) A member who shall be appointed by the Governor to hold office for the term of six (6) years beginning September 1, 1958, and ending August 31, 1964.

(2) A member who shall be appointed by the Chief Justice of the Supreme Court of Texas to hold office for a four-year term beginning September 1, 1958, and ending August 31, 1962.

(3) A member appointed by the Speaker of the House of Representatives who shall hold office for a two-year term beginning September 1, 1958, and ending August 31, 1960.

It is provided that appointments of Trustees provided for after expiration of such original term as provided herein shall be made for a term of six (6) years.

(b) Three (3) Trustees shall be employee members of the Retirement System and shall be nominated and elected by the members of the Retirement System for a period of six (6) years each, according to such rules and regulations as the State Board of Trustees shall adopt to cover such nominations and elections and provided, however, that the elected employee members of the Board of Trustees on the date of September 1, 1958, shall continue to serve until the expiration of the term for which they were elected. Thereafter elections shall be held on or before July 31, 1961, and biennially thereafter for the purpose of nominating and electing an employee who is a member of the Retirement System to serve as an ex officio member of the Board of Trustees for a period of six (6) years, and said employee after being elected shall take the oath and begin his term as an ex officio member on the first day of September next following the election. It is further provided that all elections held for the nomination and election of an ex officio employee member trustee shall be on ballots made available to the members by the Board of Trustees. It is further provided that it shall be the additive and cumulative duty of every employee who is a member of the Employees Retirement System to serve as an ex officio member of the Board of Trustees after being nominated and elected as provided in the Act.

2. Vacancies of elected ex officio employee members of the Board of Trustees shall be filled by the Board from among members of the System. Provided, however, that no employee of a department shall be eligible to serve as an elected ex officio employee member of the Board of Trustees, during the term of an elected ex officio employee member of the Board of Trustees who is also employed by the same department.

3. The Trustees who are currently contributing members of the Employees Retirement System shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board. Trustees who are not currently contributing members of the Employees Retirement System may receive compensation and all necessary expenses that they may incur through service on the Board as approved by the Board of Trustees.

4. Each Trustee shall, within ten (10) days after his appointment, in addition to the Constitutional oath, subscribe to the following oath of office: "I do solemnly swear that I will, to the best of my ability, discharge the duties of a Trustee of the Employees Retirement System and will diligently and honestly administer the affairs of the Board of Trustees of said Retirement System and that I will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to said Retire-

ment System." This oath shall be subscribed to by members making it before any officer qualified to administer oaths in Texas, and duly filed in the office of the Secretary of State.

5. Each Trustee shall be entitled to one (1) vote in the Board. A majority of the State Board of Trustees shall constitute a quorum and a majority vote of those present shall be necessary for a decision by the Trustees at any meeting of said Board.

6. Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business.

7. The State Board of Trustees shall elect from its membership a Chairman and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. The Executive Secretary appointed shall have been a citizen of Texas three (3) years immediately preceding his appointment, shall have executive ability and experience to carry out the duties of the office and shall hold his position until removed by the Board. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than paid for like or similar service of the State of Texas.

8. The State Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the expenses of the System.

9. The State Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System.

#### B. Legal Adviser.

The Attorney General of the State of Texas shall be the legal adviser of the State Board of Trustees, and shall represent it in all litigations.

#### C. Medical Board.

The State Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The physicians so appointed by the State Board of Trustees shall be legally

qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the State Board of Trustees its conclusions and recommendations upon all the matters referred to it.

#### D. Duties of Actuary.

1. The State Board of Trustees shall designate an Actuary who shall be thoroughly qualified to act as the technical adviser of the State Board of Trustees on matters regarding the operation of the funds created by the provisions of this Act, and shall perform such other duties as are required in connection therewith.

2. Immediately after September 1, 1963, the Actuary shall make such investigation of the mortality, service, and compensation experience of the members of the System as he shall recommend and the State Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the State Board of Trustees such tables and such rates as are required. The State Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter, the Actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this Act.

3. At least once in each five-year period following September 1, 1963, the Actuary shall make, under the direction of the Board, an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the State Board of Trustees shall adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary.

4. On the basis of such tables as the State Board of Trustees shall adopt, the Actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

#### Management of Funds

Sec. 7. A. The State Board of Trustees shall be the Trustees of the several funds as herein created by this Act and shall have full power to invest and reinvest such funds subject to the following limitations and restrictions:

All retirement funds as are received by the Treasury of the State of Texas as deposits from contributions of members or employer as herein provided, may be invested only in bonds and other evidences

of indebtedness of the United States, and all other bonds or evidences of indebtedness which are guaranteed as to principal and interest by the United States; in bonds and other evidences of indebtedness, both general and special obligations, of the State of Texas and any of its agencies; in bonds or other evidences of indebtedness of municipal corporations or political subdivisions of the State of Texas both general and special obligations, which have been approved as to legality by the Attorney General of the State of Texas; and in securities in which the State Permanent School Fund or the Permanent University Fund of The University of Texas may be invested under present or hereafter enacted laws. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds credited herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds, provided that any money on hand shall be subject to the State Depository Laws of Texas.

B. The State Board of Trustees, annually, on August 31st, shall transfer from the Interest Fund to the Expense Fund an amount as shall be determined by the Board to be necessary for the payments of expenses of the Retirement System in excess of the amount available to be paid from the Expense Fund to cover the expenses as estimated for the succeeding year. The Board, annually, on August 31st, shall transfer to the Retirement Annuity Reserve Fund from the Interest Fund an amount equal to four (4%) per cent interest on the mean amount in the Retirement Annuity Reserve Fund for the year then ending. The Board, annually, on August 31st, shall transfer interest to the Employees Saving Fund at a rate not to exceed two and one-half (2-½%) per cent per annum on the amount in the Employees Saving Fund equal to the sum of the accumulated contributions standing to the credit at the beginning of each year of all members included in the membership of the System on August 31st of each year, and further, that such transfer of interest to said Fund shall be made before funds are transferred for Service Retirements effective August 31st of each year. The Board, annually, on August 31st, after making transfer from the Interest Fund, as above provided, shall transfer all remaining interest in the Interest Fund to the State Accumulation Fund.

C. The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees. A duly attested copy of a resolution of the State Board of Trustees

designating such persons shall be filed with said Comptroller as his authority for issuing such warrants.

D. For the purpose of meeting disbursements for annuities and other payments there may be kept available cash, not exceeding ten per cent (10%) of the total amount in the several funds of the Retirement System on deposit with the State Treasurer.

E. No trustee and no employee of the State Board of Trustees shall have any direct or indirect interest in the gains or profits of any investment made by the State Board of Trustees, nor as such receive any pay or emolument for his services other than his designated salary and authorized expenses, except such interest as such person or persons may have in the retirement funds as a member of the Retirement System.

F. The assets and moneys of the Retirement System, from whatever source derived, shall be invested as a single fund, and all securities hereafter acquired, as well as those heretofore purchased, shall be held collectively for the proportionate benefit of all funds and accounts of the Retirement System.

#### Method of Financing

Sec. 8. A. Effective September 1, 1971, the amount contributed by each member to the Retirement System shall be six per cent (6%) of the annual compensation paid to each member. The amount contributed by the State of Texas to the Retirement System shall not exceed during any one (1) year six per cent (6%) of compensation of all members provided the total amount contributed by the State during any one (1) year shall at least equal the total amount contributed during the same year by all members of the Retirement System; provided further, that all contributions made by the State shall be from and charged to the respective funds appropriated, allocated, and provided to pay the salary or compensation of the member for whose benefit the contribution is made. All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of five (5) funds; namely, the Employees Saving Fund, the State Accumulation Fund, the Retirement Annuity Reserve Fund, the Interest Fund, and the Expense Fund.

#### 1. The Employees Saving Fund.

The Employees Saving Fund shall be a fund in which shall be accumulated six per cent (6%) contributions from the compensation of members, including interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Beginning on the effective date of this Act, each department of the State shall cause to be deducted from the salary of each member on each and every payroll period, six per cent (6%) of his earnable compensation. In determining the amount earnable by a member in a payroll period, the State Board of Trustees may consider

the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than one-half ( $\frac{1}{2}$ ) of a full payroll period if an employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deductions required of any member by such an amount as shall not exceed one-tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the annual compensation upon the basis of which such deduction is to be made.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The department head of the State shall certify to the State Board of Trustees on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) Interest on member's contributions shall be credited annually as of August 31, and shall be allowed on the amount of the accumulated contributions standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year. Following the termination of membership in the Retirement System for those members who have been absent from service more than sixty (60) consecutive months in any period of six (6) consecutive years, the Employees Saving Fund account of such members shall be closed and warrants covering the total accumulated contributions sent to them upon the filing of formal application. Until the time of payment of such accumulated contributions, said members shall receive no interest on the amount due them under this Subsection, and the amount shall be held in a noninterest-bearing account to be set up for such purpose.

(d) Upon the retirement of a member, his accumulated contributions shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund.

## 2. State Accumulation Fund.

The State Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Employees Retirement System by the State of Texas. Contributions to and payments from this fund shall be made as follows:

(a) The State of Texas shall pay each year in equal monthly installments into the State Accumulation Fund an amount equal to the contributions of the members during such year. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer the amount so ascertained, and such an amount shall be paid each year in equal monthly installments in the manner hereinafter provided into the State Accumulation Fund by the Comptroller from the funds appropriated as contributions to the Employees Retirement System by the State of Texas.

(b) Upon the retirement of a member, an amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the reserve requirements for the annuity to be paid to the retired member.

## 3. Retirement Annuity Reserve Fund.

The Retirement Annuity Reserve Fund shall be the fund in which shall be held all reserves for annuities granted and in force and from which shall be paid all annuities payable as provided in this Act. This fund shall be made up of the transfers as follows:

(a) At the time of service or disability retirement the accumulated contributions of a retiring member shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund as a partial reserve for the annuity purchased by his contributions.

(b) An amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the reserve requirements for the annuity to be paid to the retired member.

(c) Transfers and payments from the Retirement Annuity Reserve Fund shall be made as provided in Section 5, Subsection C, Paragraph 6, upon the death, restoration to active service or removal from the disability list of a beneficiary retired on account of disability.

#### 4. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest, and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on August 31st, interest shall be allowed and transferred to the other funds, respectively. The State Board of Trustees shall annually transfer to the credit of the State Accumulation Fund all excess earnings after all interest-bearing funds have been duly credited with interest for the year in the manner provided in this Act.

#### 5. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this fund shall be made as follows:

(a) The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

(b) Each member shall pay with the first payment to the Employees Saving Fund each year and each year thereafter he is a member of the System, and in addition thereto, a sum of Two Dollars (\$2), which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Employees Saving Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member.

(c) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of Two Dollars (\$2) per member contributor for the year, the State Board of Trustees as evidenced by a resolution by the Board recorded in its minutes shall transfer to the Expense Fund from the Interest Fund an amount necessary to cover the expenses as estimated for the year.

(d) With respect to any fiscal year for which the Legislature, on behalf of each contributing member of the Employees Retirement System, appropriates for deposit in the Expense Fund a membership fee equal to or exceeding Two Dollars (\$2) for each such member, the fees required in Paragraph (b) above shall be waived.

#### B. Collection of Contributions.

1. The collection of members' contributions shall be as follows:

(a) Each department or agency of the State shall cause to be deducted on each

and every payroll of a member for each and every payroll period beginning on the effective date of this Act the contributions payable by such member, as provided in this Act. Each department or agency head of the State shall certify to the treasurer of said department or agency on each and every payroll a statement for the amount so deducted.

(b) The Treasurer or proper disbursing officer of each State department or agency on authority from the department or agency head shall make deductions from the compensation of members as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate a certified copy of the payroll or report and the amount specified to be deducted shall be paid to the Employees Saving Fund of the Employees Retirement System, after which the Executive Secretary of the Board of Trustees shall make a record of all receipts and turn payments over to the Treasurer of the State of Texas and by him be credited to the Employees Saving Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act.

(c) The State Treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of the funds in his custody belonging to the Retirement System. The records of the State Board of Trustees shall be open to public inspection and any member of the Retirement System shall be furnished with a statement of the amount to the credit of his individual account upon written request by such member, provided that the State Board of Trustees shall not be required to answer more than one (1) such request of a member in any one (1) year.

2. The collection of the State's contributions shall be made as follows:

(a) From and after the effective date of this Act, there is hereby allocated and appropriated to the Employees Retirement System of Texas, in accordance with this Act, from the several funds from which the members benefited by this Act, receive their respective salaries, a sum equal to six per cent (6%) of the total compensation paid to the said respective members of said Retirement System and whose compensation is paid from funds directly controlled by the State.

(b) Thereafter, on or before the first day of November next preceding each Regular Session of the Legislature, the State Board of Trustees shall certify to the Legislative Budget Board and Budget Division of the Governor's office for review the amount necessary to pay the contributions of the State of Texas to the Employees Retirement System for the ensuing biennium. This amount shall equal six per cent (6%) of the total compensation paid members of the Retirement System and shall be includ-

ed in the budget of the State which the Governor submits to the Legislature. The State Board of Trustees shall certify on or before August 31st of each year to the State Comptroller of Public Accounts and the State Treasurer the estimated amount of contributions to be received from members during the ensuing year.

(c) All moneys hereby allocated and appropriated by the State to the Employees Retirement System shall be paid to the Employees Retirement System in equal monthly installments based upon the annual estimate by the State Board of Trustees of the contributions to be received from the members of said System during said year, provided further, in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the members' contributions during the year, then such adjustment shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the State Accumulation Fund in the amount certified by the State Board of Trustees.

C. It is expressly provided that the members who are Elective State Officials shall contribute a sum equal to six per cent (6%) of the total compensation (monthly rate of pay) of the said respective Elective State Official to the Employees Saving Fund and an equal amount shall be paid by the State of Texas each year in equal monthly installments to the State Accumulation Fund, notwithstanding the provisions of Subsection A of this Section.

#### Exemption from Execution

Sec. 9. All retirement annuity payments, member's contributions, optional benefit payments, and any and all rights accrued or accruing to any person under the provisions of this Act, as well as the moneys in various funds created by this Act, shall be and the same are hereby exempt from any State, County, or Local tax, levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassigned except as specifically provided in this Act.

A. That any retired member who has been a member of a group insurance plan prior to retirement and who wishes to continue same after retirement may have any premiums due by him to be paid any group insurance deducted from his retirement allowance by specifically authorizing such deduction and payment in writing addressed to the Executive Secretary of the Employees Retirement System, provided, however, that such retired member may thereafter withdraw such authorization by a thirty (30) day written notice addressed to the Executive Secretary of such Retirement System.

B. The Board of Trustees shall adopt Rules and Regulations, to be effective no later than January 1, 1972, providing for the payment of not less than one-half ( $\frac{1}{2}$ ) the premium cost of

Group Life and Health Coverage for all member retirees. Premium costs shall be paid from the funds of the agency or department from which the member retired, and shall be based on rates not to exceed rates charged members of the Group Insurance Plan of department or agency from which the member retired. The State of Texas shall pay each year in equal monthly installments into the State Accumulation Fund an amount required to pay insurance premiums of the retirees. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer the amount so ascertained.

#### Protection Against Conversion of Funds and Fraud

Sec. 10. Any person who shall confiscate, misappropriate, or convert moneys representing deductions from members' salaries before such moneys are received by the Retirement System or after such moneys are received by the Retirement System shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) or more than five (5). Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the State Board of Trustees shall correct such error, and so far as practicable shall adjust the payment in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

#### Violation of Provisions.

Any person, including department heads, and any member of the employer and/or its treasurer or proper disbursing officer, who violates any provision of this Act other than those which the first paragraph of this Section applies shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100) or more than One Thousand Dollars (\$1,000). Any member of the System who knowingly receives money as a salary, which money should have been deducted from his salary under the provisions of this Act, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100) and not more than Five Thousand Dollars (\$5,000).

#### Surety Bonds

Sec. 11. The Treasurer of the State of Texas shall, upon becoming custodian of the Employees Retirement Funds, give a bond in the sum of Fifty Thousand Dollars (\$50,000); the Executive Secretary shall give bond in the sum of Twenty-five Thousand Dollars (\$25,000), and

the State Board of Trustees shall require any other employees and members of the State Board of Trustees to give bond in such amounts as the Board may deem necessary, conditioned that said bonded persons will faithfully execute the duties of the respective offices. All bonds shall be made with a good and solvent surety company, authorized to do business in the State of Texas, said bonds shall be made payable to the State Board of Trustees and shall be approved by it and the Attorney General of Texas. All expense necessary and incident to the execution of such bonds, including premiums thereon, shall be paid by the State Board of Trustees from the Expense Fund.

**Amount of Benefits; Creditable Service**

Sec. 12. A. It is further provided, that all service retirement annuities calculated under the laws governing the Employees Retirement System as of August 31, 1958, and payable at the effective date of this Act, as well as all such annuities awarded subsequent to the effective date of this Act, shall be increased on the month after the effective date of this Act, by an additional ten (10%) per cent; provided that nothing herein shall be construed as an increase in the minimum service retirement annuity where the original annuity calculated at less than the minimum allowance, unless such original annuity, after the application of the ten (10%) per cent increase, as provided herein, exceeds the minimum service retirement allowance provided by law; and further provided, that no member who is entitled to a service retirement shall receive as a service retirement benefit an amount which would be less than he would have been entitled to receive at the date of his retirement in an equivalent benefit calculated under the laws governing the Employees Retirement System of Texas as effective August 31, 1958 and subsequent increase effective September 1, 1963 and thereafter shall receive an amount as a service retirement benefit as provided herein.

B. Nothing in this Act shall be construed as reducing the annuities or benefit allowances heretofore approved for or awarded to any person prior to September 1, 1958, in accordance with the laws relating to the Employees Retirement System in effect August 31, 1958, provided that if the Service Retirement Benefit of any such retired beneficiary is less than the minimum prescribed under Section 5, Subsection B, Paragraph 1, as applicable then such benefits shall be increased to the minimum prescribed for equivalent service as if said minimum retirement benefit was applicable on the effective date of the retirement.

C. It is further expressly provided herein that creditable service of all members of the Employees Retirement System of Texas as accumulated by each member and granted by this System as of August 31, 1958, shall not be reduced but shall be granted and shall be effective September 1, 1958 and thereafter.

D. It is expressly provided herein that no increase in contribution rate or benefits appli-

cable to Elective State Officials, appointive officers and employees, and/or retired members shall be effective on the date of passage of this Act, but shall become effective on the first day of the month following the effective date of this Act. Elective State Officials other than members of the Legislature of the State of Texas shall be entitled to elect to claim benefits under this Act or under other applicable retirement provisions of the Employees Retirement System of Texas, but in no event shall such Elective State Official claim under this Act as well as other applicable retirement provisions. Such election may be exercised by written notice to the Employees Retirement System at any time, but such Elective State Official once having elected to come under other applicable retirement provisions shall not thereafter be permitted to elect to come under this Act.

**Partial Invalidity; Repeal**

Sec. 13. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency; provided, however, that this Act shall not be construed as repealing or affecting the provisions of any Statute which may be enacted by the Fifty-fifth Legislature to make effective the provisions of Subsection (a) Section 62, Article XVI of the Constitution of Texas but such Statutes shall be construed as being definitive of the retirement rights and benefits of the persons to whom they appertain.

[Acts 1947, 50th Leg., p. 697, ch. 352; Acts 1949, 51st Leg., p. 373, ch. 197, §§ 1, 2; Acts 1949, 51st Leg., p. 416, ch. 222, §§ 1, 2; Acts 1949, 51st Leg., p. 724, ch. 388, § 1; Acts 1949, 51st Leg., p. 935, ch. 509, § 1; Acts 1951, 52nd Leg., p. 257, ch. 152, §§ 3, 4; Acts 1951, 52nd Leg., p. 392, ch. 250, §§ 1 to 3; Acts 1951, 52nd Leg., p. 465, ch. 295, § 1; Acts 1951, 52nd Leg., p. 865, ch. 488, § 1; Acts 1953, 53rd Leg., p. 882, ch. 361, § 1; Acts 1955, 54th Leg., p. 725, ch. 259, § 1; Acts 1955, 54th Leg., p. 758, ch. 276, § 1; Acts 1957, 55th Leg., p. 157, ch. 68, § 1; Acts 1957, 55th Leg., p. 1208, ch. 402, art. I; Acts 1959, 56th Leg., p. 518, ch. 229, § 1; Acts 1961, 57th Leg., p. 589, ch. 281, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 11, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 1194, ch. 477, §§ 1 to 5, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 1372, ch. 524, art. I, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 276, ch. 116, § 1, eff. May 6, 1965; Acts 1965, 59th Leg., p. 1532, ch. 670, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 668, ch. 279, § 1, eff. May 25, 1967; Acts 1969, 61st Leg., p. 3, ch. 2, §§ 1 to 6, eff. Feb. 18, 1969; Acts 1969, 61st Leg., p. 287, ch. 114, §§ 1 to 4, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2433, ch. 814, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1331, ch. 355, §§ 1, 2, eff. May 25, 1971; Acts 1971, 62nd Leg., p. 1354, ch. 359, §§ 1 to 11, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 2714, ch. 885, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3410, ch. 1041, § 1, eff. June 17, 1971; Acts 1973, 63rd Leg., p. 868, ch. 394, §§ 1 to 13; Acts 1973, 63rd Leg., p. 1344, ch. 509, §§ 1, 2, eff. June 14, 1973.]

Sections 13 and 14 of the Act of 1947 provided:

"Sec. 13. The Legislature hereby reserves the right to amend any section, paragraph or any and all provisions of this Act as it may from time to time deem necessary."

"Sec. 14. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

Section 3 of Acts 1949, 51st Leg., p. 373, ch. 197, read: "It is expressly provided that monthly payments, payable sixty (60) days or more after the passage of this Act under prior service annuities which became effective prior to the passage of this Act, or which becomes effective within sixty (60) days from and after the passage of this Act shall be computed on the same basis and in the same manner as monthly payments under prior service annuities for members whose retirement is effective later than sixty (60) days after the effective date of this amending Act."

Section 3 of Acts 1949, 51st Leg., p. 416, ch. 222, read as follows: "If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act, or the application thereof to any person or circumstances, shall be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision or holding shall not affect the validity of the remaining portions or provisions of this Act, and the Legislature hereby declares it would have passed such remaining provisions without the invalid provisions, and to this end the provisions of this Act are declared to be severable. All laws or parts of laws that are inconsistent with the provisions of this Act, or that conflict herewith are, insofar as such inconsistency or conflict exists, hereby repealed and this Act shall prevail over any conflicting provision of law. It is provided, however, that Chapter 352, Acts of the Regular Session of the Fiftieth Legislature, or its application to any person or circumstances, and all benefits and obligations created by virtue thereof before the effective date of this amendatory Act, shall be and remain valid and binding until the effective date of this Act."

Article II of Acts 1957, 55th Leg., p. 1208, ch. 402 provided: "This Act shall become effective September 1, 1958, and operative as a law only upon the condition that the Constitutional Amendment to be known as Subsection (a) of Section 62, Article XVI of the Constitution of Texas which is proposed by Senate Joint Resolution No. 13 of the Fifty-fifth Legislature, 1957, or as proposed by House Joint Resolution No. 37, of the Fifty-fifth Legislature, 1957, shall be adopted and become a part of the Constitution of Texas; and in the event of adoption of the Constitutional Amendment, this Act shall become operative as a law September 1, 1958. In the event the proposed Constitutional Amendment shall fail to be adopted, then in such event this Act shall never become effective or operative in whole or in part."

Section 7 of Acts 1969, 61st Leg., p. 3, ch. 2, provided: "If any Section or part of any Section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

Acts 1971, 62nd Leg., p. 1331, ch. 355, which by sections 1 and 2 amended subsection H of section 4 and section 3E of this article respectively, provided in section 3: "If any section or subsection of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other sections, subsections or applications of the Act which can be given effect without the invalid section, subsection or application, and to this end the sections, subsections and applications of this Act are declared to be severable."

Acts 1971, 62nd Leg., p. 1354, ch. 359, which by sections 1 to 11 amended sections 1, 3, 4A and F, 5, 8 and 9 and added section 5-1 of this article, provided in sections 12 and 13:

"Sec. 12. If any section, subsection or clause of this Act is, for any reason, held to be unconstitutional such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection or clause so declared unconstitutional."

"Sec. 13. This Act shall become effective September 1, 1971."

Acts 1971, 62nd Leg., p. 2714, ch. 885, which by section 1 added subsection J of section 4, provided in sections 2 and 3:

"Sec. 2. The Legislature finds that throughout the State of Texas in those counties in which there is a District Attorney, the County Attorneys have exercised the powers of Assistant District Attorney, even though they have not been so designated by statute as Assistant District Attorneys. The Legislature further finds that by statute the County Attorneys have been given the duty, in the absence of the District Attorney, to represent the State of Texas in all criminal cases under examination or prosecution in their counties. The Legislature further finds that by statute the County Attorneys of the State have been required to act in behalf of the State of Texas in matters of habeas corpus, in the absence of the District Attorney, and that the County Attorneys have been directed by statute to accept felony complaints, and when requested the County Attorneys have been directed to assist the District Attorney in the presentation of matters before a grand jury, and in the

trial of felony cases. The Legislature further finds that the County Attorneys have been directed by statute to report to the Attorney General when so requested such information as may be required in relation to criminal matters and the interest of the State. Therefore the Legislature finds and determines that the various County Attorneys of the State are state officials.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 5 of Acts 1973, 63rd Leg., p. 870, ch. 394 consolidated and amended former subsecs. G, G-1 and G-2 of § 4 of this article by substituting therefor a subsec. G.

A subsec. H. of § 4 of this article, added by Acts 1971, 62nd Leg., p. 3410, ch. 1041, § 1, was repealed by Acts 1973, 63rd Leg., p. 873, ch. 394, § 7. Repealed subsec. J. of § 4 was added by Acts 1971, 62nd Leg., p. 2714, ch. 885, § 1.

Sections 14 to 16 of said Act of 1973 provided:

"Sec. 14. This Act shall become effective September 1, 1973."

"Sec. 15. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection or clause so declared unconstitutional."

"Sec. 16. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

#### Art. 6228a-1. Employees Executing Waivers; Credit for Service

Any State employee who heretofore executed a waiver in the Employees Retirement System of Texas and who was employed by a State Department of the State of Texas during the fiscal year commencing September 1, 1952, shall have the privilege within one year from the effective date of this Act of electing to receive full credit for State employees' service in Texas prior to the year 1947, provided said employee within a period of five (5) years from September 1, 1953, shall deposit with the Employees Retirement System of Texas, at Austin, Texas, all back contributions and dues commencing with the State fiscal year, September 1, 1947. The amount to be deposited by each State employee shall be determined by the Employees Retirement System of Texas, based upon the number of years actually employed by the State since 1947 and the salary received. Said State employee shall be required to file a statement of all earnings from the State since September 1, 1947, on forms prescribed by the State Board of trustees. All deposits made by each individual State employee shall be matched by an equal sum by the State of Texas, as now provided in the Employees Retirement System. There is hereby appropriated from the several funds from which the said State employees were paid an amount equal to the contributions of said State employees; based upon their salaries received from said funds. It is further provided that the State Board of Trustees shall certify to the State Comptroller the matching fund requirements of the State of Texas to equal the amount of contributions by said State employees, and the Comptroller shall authorize the State Treasurer to make such transfers of funds to the Employees Retirement System.

[Acts 1953, 53rd Leg., p. 442, ch. 130, § 1.]

**Art. 6228a-2. Teachers' Retirement System and State Employees Retirement System; Prior Service Credits and Certificates**

**PART 1. CREDITABLE SERVICE**

Members of Teachers' Retirement System; Withdrawal or Waiver; Reinstatement; Prior Service Certificate

1.01 Any person who is a member of the Teacher Retirement System of Texas, or who becomes a member and continues as a teacher or auxiliary employee for five consecutive years, under the provisions of Chapter 530, Acts of the Regular Session of the 54th Legislature, 1955, as amended,<sup>1</sup> may claim service prior to September 1, 1947, as a state employee as defined in the provisions of Chapter 402, Acts of the Regular Session of the 55th Legislature, 1957, as amended,<sup>2</sup> provided, however, that if any such person has withdrawn or withdraws their funds and/or has signed a waiver with the Employees Retirement System, such person may not claim prior service as provided herein, unless and until such person has deposited with the Teacher Retirement System all funds withdrawn, plus any penalties and fees required by the Teacher Retirement Act in like manner as if such service had been teaching or auxiliary service; provided, further, that if such member has signed a waiver, payment shall be made to the Teacher Retirement System as if such service had been teaching or auxiliary service waived in the Teacher Retirement System, and in addition thereto shall make any other deposits as may be required by the Teacher Retirement Act.

Notwithstanding any other provision of this Section, nothing herein shall authorize payment or repayment of such funds except during the time members of the Teacher Retirement System shall likewise be given the privilege, by the terms of the Teacher Retirement Act, of depositing the amount of funds withdrawn and/or the amount that would have been paid to the Teacher Retirement System had the member not signed a waiver.

Upon verification of such service claimed by the member of the Teacher Retirement System as a state employee, the Teacher Retirement System of Texas shall issue a Prior Service Certificate, to include such state employee service as prior service to the same extent and value as teaching and/or auxiliary employment as provided in the Teacher Retirement Act, as amended, and shall require deposits as contributions in such amounts as would have been required had such service been covered by the Teacher Retirement Act.

<sup>1</sup> Article 2922-1 (repealed; see, now, Education Code, § 3.01 et seq.)

<sup>2</sup> Article 6228a.

Members of Employees Retirement System; Withdrawal or Waiver; Reinstatement; Prior Service Certificate

1.02 Any person who is a member of the Employees Retirement System of Texas, or who

becomes a member and continues as an employee for five consecutive years, under the provisions of Chapter 402, Acts of the Regular Session of the 55th Legislature, 1957, as amended, may claim service prior to September 1, 1937, as a teacher, or September 1, 1949, as an auxiliary employee as defined under the provisions of Chapter 530, Acts of the Regular Session of the 54th Legislature, 1955, as amended, provided, however, that if any person has withdrawn or withdraws their funds and/or has signed a waiver with the Teacher Retirement System, such person may not claim prior service as provided herein, unless and until such person has deposited with the Employees Retirement System all funds withdrawn, plus any penalties and fees required by the Employees Retirement Act in like manner as if such service had been State Employee Service; provided, further, that if such member has signed a waiver, payment shall be made to the Employees Retirement System as if such service had been State Employee Service waived in the Employees Retirement System, and in addition thereto shall make any other deposits that may be required by the Employees Retirement Act.

Notwithstanding any other provisions of this Section, nothing herein shall authorize payment or repayment of such funds except during the time members of the Employees Retirement System shall likewise be given the privilege, by the terms of the Employees Retirement Act, of depositing the amount of funds withdrawn and/or the amount that would have been paid to the Employees Retirement System had the member not signed a waiver.

Upon verification of such service the Employees Retirement System of Texas shall issue a Prior Service Certificate, including such service as prior service with the Employees Retirement System to the same extent and value as provided in the Employees Retirement Act, as amended, for service as a teacher prior to September 1, 1937, or auxiliary employee service prior to September 1, 1947, and shall require and receive deposits as retirement contributions on such service after September 1, 1947, but prior to September 1, 1949, in such amounts as would have been required had such service been covered by the Employees Retirement Act.

**Reinstatement of Account**

1.03 Any member of either system who has terminated an account, in either system, may revoke a waiver or reinstate such account by filing a request with the system in which membership service is being rendered; subject, however, to the law governing the operation of the system in which the request is filed.

**Credit for Fiscal Year**

1.04 It is provided that no person may be granted more than one year of creditable service for one fiscal year beginning September 1, and ending August 31.

Membership in Both Retirement Systems; Cessation of Contributions to One System

1.05 It is provided that any person who is a member of the Employees Retirement System, and also of the Teacher Retirement System, on the effective date of this Act, and who has been granted creditable service by each system, shall remain an active member of both systems and be required to pay a membership fee in both systems unless his account is withdrawn or transferred from one system to the other system.

It is further provided that in the event a member of both systems ceases to contribute to one system, while continuing to contribute to the other system, for a period of five consecutive years, the amount standing to the credit of said member plus an equal amount of state matching funds, and service accumulated in the system from which he has ceased to contribute may be transferred to the other system in which the member does and is contributing. It is provided herein that such service transferred from one system to the other shall be governed as set forth in subsections 1.01 and 1.02 of this Act.

It is provided that the account of the member transferred from any one system to the other will be cancelled by the system from which it is transferred and will be granted by the other system as if said service had not been heretofore granted, but shall be granted as set forth in this Act under subsections 1.01 and 1.02.

It is provided that prior service as set forth in subsections 1.01 and 1.02 shall apply after the effective date of this Act regardless if said service had heretofore been granted, and that membership service shall be transferred from one system to the other by cancelling the account of said member and transferring the amount standing to the credit of said member's account plus an equal amount of state matching funds.

Matching Contributions

1.06 Each retirement system shall receive matching contributions, as provided under the respective Retirement Acts, for deposits of original contributions for service claimed or granted under the provisions of this Act.

PART 2. SERVICE RETIREMENT

Application for Retirement

2.01 Any person who accumulated creditable service between both the Teacher Retirement System and the Employees Retirement System of Texas may retire by making written application to the Board of Trustees of the Retirement System in which the member had last rendered creditable service provided that such last service was five (5) consecutive years, and in the event that such last service was less than five (5) consecutive years, then to the system in which most years of creditable service has been granted.

Transfer of Accumulated Service and Funds

2.02 Upon application for retirement, the system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits.

Law Governing Restrictions, Requirements and Benefits

2.03 The law regarding service retirement in the system from which the member will retire will govern the restrictions, requirements and benefits to be paid for the total service.

Joint Retirement Benefits of Persons Previously Retired

2.04 It is expressly provided that this Act shall not affect the joint retirement benefit of any person who retired on or before August 31, 1959.

PART 3. DISABILITY RETIREMENT

Application for Retirement

3.01 Any person who has accumulated sufficient creditable service between the Teacher Retirement and the Employees Retirement Systems of Texas may apply for disability retirement by filing an application with the Board of Trustees of the retirement system in which the member last rendered covered service.

Transfer of Accumulated Service and Funds

3.02 Upon application for retirement, the system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits.

Law Governing Restrictions, Requirements and Benefits

3.03 The law regarding disability retirement in the system from which the member will retire will govern the restrictions, requirements and benefits to be paid for the total service.

Joint Retirement Benefits of Persons Previously Retired

3.04 It is expressly provided that this Act shall not affect the joint retirement benefit of any person who retired on or before August 31, 1959.

PART 4. DEATH BENEFITS

Payment of Death or Survivor Benefits

4.01 It is provided herein that in the event of death of a member having service with the Teacher Retirement System and Employees Retirement System, that the Retirement System in which the member last rendered covered service will pay death and/or survivor bene-

fits in the amount and manner provided in the law governing said system.

**Transfer of Accumulated Service and Funds**

4.02 The system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits.

**PART 5. ADMINISTRATION**

**Intention of Legislature; Reciprocal Service**

5.01 It is the legislative intent of this Act to provide for reciprocal service as set forth in Section 63 of Article XVI of the Constitution of Texas, and that qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System shall be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the state. Likewise, qualified members of the Employees Retirement System of Texas, in addition to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all service, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the state.

**Rules and Regulations; Transfer of Service and Funds Between Systems**

5.02 It is expressly provided herein that the Board of Trustees of the Teacher Retirement System of Texas and the Board of Trustees of the Employees Retirement System of Texas shall adopt, in separate or joint session, identical rules and regulations as may be required to place this Act into effect and to provide for the transfer of service and funds between the systems, and the State Comptroller shall transfer such funds in such amounts as are certified by the system from which said funds are to be transferred.

**Re-employment of Retired Persons**

5.03 Employment of any person retired under the provisions of this Act in a position covered by either the Teacher Retirement System or the Employees Retirement System shall be subject to the provisions of the law governing re-employment in a position covered by the system under which the member retired.

[Acts 1955, 54th Leg., p. 356, ch. 75; Acts 1959, 56th Leg., p. 19, ch. 230, § 1.]

**Art. 6228a-3. Resumption of Employment by State After Termination of Membership in Retirement System; Redepositing Withdrawn Deposits; Prior Service Credit**

Any person who heretofore became a member of the Employees Retirement System and who thereafter terminated such membership prior to the effective date of this Act and withdrew his accumulated deposits, but who has or does return to service as a State employee prior to September 1, 1957, and resumes his membership in the Employees Retirement System, and who following such resumption of membership renders service for two (2) consecutive years, shall have the privilege, within one (1) year after completing two (2) consecutive years of service following resumption of membership or within one (1) year after the effective date of this Act, if the two (2) consecutive years of service were completed before that date, of repaying the total amount withdrawn, plus ten per cent (10%) penalty, plus membership fees for the period between termination and resumption of membership and thereupon such member shall be entitled to credit for all Prior Service and Membership Service to which he was entitled prior to such termination and withdrawal. Upon repayment the amount withdrawn shall be credited to the individual account of the member in the Employees Saving Fund and the amount of the penalty shall be credited to the State Accumulation Fund. The amount to be deposited shall be determined in each case by the Board of Trustees of the Employees Retirement System; and in no event shall any such person be granted retirement upon such former service credits until the amount so determined shall have been paid in full.

[Acts 1957, 55th Leg., p. 236, ch. 113, § 1.]

**Art. 6228a-4. Repealed by Acts 1969, 61st Leg., p. 127, ch. 41, § 2, eff. March 31, 1969; Acts 1969, 61st Leg., p. 3042, ch. 889, § 2, eff. Sept. 1, 1969**

Article 6228a-4 provided for reinstatement of service credits of teachers and auxiliary employees in public schools who had executed a waiver of membership in Retirement System and had withdrawn deposits, and was derived from Acts 1961, 57th Leg., p. 35, ch. 22, §§ 1, 2. Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts the Texas Education Code. See, now, Education Code, §§ 3.25, 3.26.

**Art. 6228a-5. Annuities for Certain Public Employees; Salary Reductions**

Sec. 1. Local Boards of Education of the Public Schools of this State, the Governing Boards of the state-supported institutions of higher education, the Coordinating Board, Texas College and University System, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation and the state schools, state hospitals, and other facilities and institutions under its jurisdiction, the Texas State Department of Health and facilities and institutions under its jurisdiction, the Texas Youth Council and facilities and institutions under its jurisdiction, and the governing

boards of Centers for Community Mental Health and Mental Retardation Services, county hospitals, city hospitals, city-county hospitals, hospital authorities, hospital districts, affiliated state agencies, and political subdivisions of each of them, are hereby authorized to enter into agreements with their employees for the purchase of annuities for their employees as authorized in Section 403(b) of the Internal Revenue Code of 1954, as amended.<sup>1</sup>

Sec. 1A. The Comptroller of Public Accounts is hereby authorized to effect reductions in salary of participants when authorized in writing and shall apply the amount of the reduction to the purchase of annuity contracts, the exclusive control of which will vest in the participants.

[Acts 1962, 57th Leg., 3rd C.S. p. 60, § 1; Acts 1969, 61st Leg., p. 2297, ch. 774, § 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 925, ch. 139, § 1, eff. May 10, 1971; Acts 1971, 62nd Leg., p. 2372, ch. 733, § 1, eff. June 8, 1971.]

<sup>1</sup> 26 U.S.C.A. § 403(b).

**Art. 6228b. Retirement of Justices, Judges and Commissioners of Appellate and District Courts**

**Definitions**

Sec. 1. The following words and phrases as used in this Act shall, unless a different meaning is clearly required by the context, have the following meanings, respectively:

(a) "Court" or "Courts" shall include only The Supreme Court, The Court of Criminal Appeals, Commissions to any of the Courts named herein, The Courts of Civil Appeals, District Courts and Criminal District Courts, of Texas.

(b) "Judge" and "Judges" shall include all Commissioners, Judges and Justices of Appellate Courts, Judges of District Courts and Criminal District Courts, and none others.

**Qualifications for Retirement; Death Benefit Plan Selection; Retirement Pay; Reduced Annuity Plans; Retirement Age**

Sec. 2. (a) Any judge in this state may, at his option, retire from regular active service after attaining the age of sixty-five (65) years and after serving on one or more of the courts of this state at least ten (10) years continuously or otherwise, provided that his last service prior to retirement shall be continuous for a period of not less than one year. Any person who has served on one or more of the courts of this state at least twelve (12) years, continuously or otherwise, regardless of whether he is serving on a court at such time, shall after attaining the age of sixty-five (65) years, be qualified for retirement pay under this Act. Any person retiring in accordance with this Act after the effective date of this amendment shall, during the remainder of such person's lifetime receive from the State of Texas monthly a base retirement payment equal to fifty percent (50%) of the salary being received by a judge of a court of the same classification

last served by such person as judge. An additional ten percent (10%) of the applicable salary shall be added to the base retirement payments to the following judges: (1) those eligible for retirement under any provisions of this Act as amended who retire at or before age seventy (70); (2) those who are not eligible by length of service to retirement benefits at age 70 but who retire immediately upon becoming eligible; and (3) those in office on September 1, 1967, who then are or during their current term of office will be seventy (70) or more years of age and who retire at or before the end of their current term of office; provided, however, the additional ten percent (10%) benefit shall not be paid to any judge who has been out of office for a period of longer than one (1) year at the time he applies for retirement benefits under this Act. Any judge drawing retirement at the effective date of this Act shall receive the same retirement pay as judges of the same classification who have retired on the current pay scale; that said judge shall be entitled to any raises based upon increases in current salary.

(a-1) Prior to retirement any contributing member with ten (10) or more years creditable service, and any noncontributing member with twelve (12) or more years creditable service, may select a Death Benefit Plan and designate a nominee to receive a reduced monthly annuity either for life, or for a ten (10) year guaranteed period, to become effective and payable, in lieu of the refund of the member's contributions, to such nominee beginning the day following the death of such member. If the qualified member dies without having made such Death Benefit Plan Selection, the surviving spouse may choose the plan in the same manner as if the member had completed the selection; otherwise, contributions shall be refunded to the designated beneficiary. Application for such plan shall be on forms prescribed by the State Board of Trustees. The reduced benefits shall be computed in the same manner as for a member's service retirement as provided elsewhere in this Act. The ages of the member and the nominee at the date of the member's death shall be used in determining the reduced annuity. The plan selected shall become null and void upon the effective date of the member's retirement, provided, however, that any member with seven (7) or more years of creditable service who is required to retire on disability, as provided elsewhere in this Act, shall be eligible to select a reduced annuity in the same manner as that provided for members retiring on a service retirement.

(b) The retirement payments of all persons who have retired under provisions of prior law shall continue without regard to the provisions of subsection (a) and such subsection shall not have the effect of increasing or diminishing such payments.

(c) A person retiring under the provisions of this Act after September 1, 1967, shall have the right to accept a reduced annuity similar

to that provided in the State Employees Retirement System Act so as to convert the actuarial equivalent of the retirement payments which would accrue to such person hereunder during the life expectancy of such person to either a joint survivorship annuity plan or a fixed term annuity plan similar to that provided in the State Employees Retirement System Act for the benefit of the spouse or a specified dependent of such person. Application for such plan shall be made to the State Employees Retirement Board within thirty (30) days after such person retires under this Act. A person who has retired under the provisions of this Act prior to September 1, 1967, shall have the right to accept a reduced annuity in the manner set forth above provided (1) such person makes application therefor within ninety (90) days after September 1, 1967, and (2) repays to the State of Texas the difference between the reduced annuity and the amount actually received by such person in retirement payments. The ages upon which the reduced annuity shall be computed shall be the ages of the retired judge and the beneficiary as of the date of retirement. The beneficiary of an annuity plan under this subsection (c) shall not be entitled to any benefits under Section 6A of this Act.

(d) Any person qualified for retirement pay under this Act shall, after reaching the age of sixty (60) years, if he elects to receive retirement pay prior to reaching sixty-five (65) years of age, be qualified for retirement pay but shall have his benefits reduced from age sixty-five (65) years and his monthly base retirement payments shall be the following percent of the salary being received by a judge of a court of the same classification last served by such person as a judge, based upon his retirement age as follows:

If the retirement age is sixty (60) years, the percent shall be forty (40) percent;

If the retirement age is sixty-one (61) years, the percent shall be forty-one and seven-tenths (41.7) percent;

If the retirement age is sixty-two (62) years, the percent shall be forty-three and six-tenths (43.6) percent;

If the retirement age is sixty-three (63) years, the percent shall be forty-five and six-tenths (45.6) percent;

If the retirement age is sixty-four (64) years, the percent shall be forty-seven and seven-tenths (47.7) percent;

(e) The reduced retirement benefits authorized by Section 1 hereof shall not apply if said judge retires as authorized by statute, or, is made to retire by the State Judicial Qualification Commission, because of physical or mental illness, but a judge so retiring or made to retire because of mental or physical illness, if he is eligible for retirement pay, shall, regardless of age, be paid retirement benefits on the basis of the percentages provided by Section 1 of Chapter 435, Acts of the 61st Legislature of

Texas, 1969 and compiled as Section 2(a) of Article 6228b, Vernon's Texas Civil Statutes.

#### Credit for Service in Armed Forces

Sec. 2A. The time served in the armed forces of the United States government during the time of war by any Judge coming within the purview of this Statute shall be credited to the length of judicial service, if such services in the armed forces of the United States government were during the elective tenure of such Judge.

#### Credit for Legislative Service

Sec. 2B. The time served in the Legislature of the State of Texas by any judge coming within the purview of this statute shall be credited to the length of judicial service.

#### Right to Retire for Disability

Sec. 3. If a judge has served on one (1) or more of the courts of this state at least seven (7) years, continuously or otherwise, and because of disability can no longer perform his regular judicial duties as such judge, he shall be retired from regular active service, irrespective of his age, and shall be entitled to retirement pay during the remainder of his lifetime or during the period of such disability, under the same conditions and limitations as provided in Section 2 of this Act.

Any judge coming within the purview of this Statute who shall apply for retirement by reason of physical incapacity shall file with the Supreme Court of Texas written reports by two (2) licensed physicians of the State of Texas fully reporting the claimed physical incapacity; and the Chief Justice of the Supreme Court of Texas is hereby vested with the authority to appoint a licensed physician of the State of Texas to make any additional medical investigation they deem necessary. Provided, however, that if such physical disability is caused or results from the intemperate use of alcohol or narcotic drugs, such facts shall be grounds for denial of such benefits.

#### Proof of Physical Incapacity

Sec. 3A. Any Judge coming within the purview of this Statute who shall apply for retirement by reason of physical incapacity shall file with the Supreme Court of Texas written reports by two (2) licensed physicians of the State of Texas fully reporting the claimed physical incapacity; and the Chief Justice of the Supreme Court of Texas is hereby vested with the authority to appoint a licensed physician of the State of Texas to make any additional medical investigation they deem necessary.

#### Judges of Abolished Courts; Continuity of Service

Sec. 4. Any person who was, or but for the abolishment of such Court before the expiration of his term of office would have been, serving as a Judge of a Court of this State at the time the Retirement Amendment, House Joint Resolution No. 39, was adopted November

2, 1948, and who had served on one (1) or more of the Courts of this State at least ten (10) years, continuously or otherwise, and had attained the age of sixty-five (65) years at the time of the adoption of the Retirement Amendment, shall be deemed to come within the provisions of this law and be entitled to receive retirement pay under the same terms and limitations provided in Section 2 of this Act, regardless of whether he is now serving on a Court of this State. Any person who has served on one (1) or more Courts of this State as defined herein for twenty-four (24) years or more at any time, continuously or otherwise, provided that his last service prior to the date of retirement shall have been continuous for a period of not less than ten (10) years, shall likewise be entitled to retirement pay under the provisions of this Act.

#### Contributions and Appropriations

Sec. 5. From and after the effective date of this Act every Judge of this State shall contribute five per cent (5%) of his annual salary paid by the State to assist in carrying out the provisions of this Act. One-twelfth (1/12) of such amount shall be deducted by the State Comptroller each month from the salary of such Judge and the balance only paid him by the Comptroller. The amount deducted shall remain in the State General Fund and be subject to appropriation by the State Legislature as other moneys in said fund. The Legislature shall appropriate such sums of money as may be necessary to carry out this Act.

#### Payment of Accumulated Contributions Upon Death or Resignation From Office; Removal From Office; Ineligibility for Retirement Pay

Sec. 6. In the event a judge dies, resigns his office or otherwise ceases to be a judge prior to the time he has the requisite length of service for retirement benefits under the provisions of this Act, the amount of his accumulated contributions shall be paid to his estate or to any beneficiary nominated by written designation of such judge duly filed with the Board of Trustees of the Employees Retirement System, or to him, as the case may be. In the event a judge who has the requisite length of service for retirement dies before retiring, his accumulated contributions shall be paid to his estate, or to any beneficiary nominated by written designation of such judge duly filed with the Board of Trustees of the Employees Retirement System. Provided, however, if any person subject to the foregoing provision later becomes a judge of a court of this state he must pay back to the state the amount of the contributions which he received before being entitled to retirement benefits under the provisions of this Act. The fact that a judge resigns his office prior to applying for retirement benefits shall not prejudice the right of such judge to such benefits if he is otherwise eligible. Any judge who is removed from office by impeachment, or is otherwise removed for official misconduct, shall be ineligible to

draw retirement pay under the provisions of this Act.

#### Disposition of Balance of Retirement Contributions of Deceased Retired Judge

Sec. 6A. Should any judge of this state die after retiring under the provisions of this Act without having received retirement pay or payments in a total amount equal to the total amount of the contributions made by him as provided in Section 5 of this Act, his named beneficiary shall be paid a sum equal to the difference between the total amount of contributions paid in by him and the total amount received by him as retirement pay; but should any judge die without having named a beneficiary then his heirs or legal representative shall have a period of two years from the date of his death in which to claim said sum.

#### Ineligibility to Practice Law; Continuance as Judicial Officer; Assignments and Compensation

Sec. 7. During the time judges who have retired under the provisions of the Act are receiving retirement pay they shall not be allowed to appear and plead as attorneys at law in any court in this State. Any person who has retired under the provisions of this Judicial Retirement Act may elect in writing addressed to the Chief Justice of the Supreme Court within ninety (90) days after such retirement to continue as a judicial officer, in which instance they shall, with their own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court to sit in any court of this State of the same dignity, or lesser, as that from which they retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act,<sup>1</sup> and while so assigned, shall have all the powers of judges thereof. Any district judge or appellate judge who has retired under the provisions of this Judicial Retirement Act and has elected to continue as a judicial officer may sit as a Commissioner of the Court of Criminal Appeals, if designated and appointed by the Presiding Judge of the Court of Criminal Appeals, with his own consent to each designation and appointment. While assigned to said court, or serving as a Commissioner to the Court of Criminal Appeals, such judges shall be paid an amount equal to the salary of judges of said court, in lieu of retirement allowance. No person who has heretofore retired under the provisions of this Judicial Retirement Act shall be considered to have been a judicial officer of this State after such retirement, unless such person has accepted an assignment by the Chief Justice to sit in a court of this State.

<sup>1</sup> Article 200a.

#### Retired Judges as Judicial Officers

Sec. 7A. (a) Any person who has retired under the provisions of this Judicial Retirement Act and who within ninety (90) days after such retirement accepts an assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of an Administrative Judicial

District shall continue as a judicial officer, in which instance he shall, with his own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of any Administrative Judicial District to sit in any court of this state of the same dignity, or lesser, as that from which he retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, and while so assigned, shall have all the powers of a judge thereof. While assigned to said court, such person shall be paid an amount equal to the salary of the judge of said court, in lieu of retirement allowance.

(b) The judicial acts of any person, who has retired under the provisions of this Judicial Retirement Act, and who after June 8, 1967, and before the effective date of this amended Section accepted an assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of an Administrative Judicial District to sit in any court of this state of the same dignity, or lesser, as that from which he retired, or if in a District Court, under the rules then provided by the Administrative Judicial Act, served that court as a judicial officer, and while serving that court, had all the powers of a judge thereof, shall, upon the effective date of this amended Section, continue to be eligible for assignment under the provisions of this Act. The judicial acts of any person so serving and the judgments and all proceedings of the court which he served are hereby validated.

**Administration and Responsibility for Operation;  
Rules and Forms**

Sec. 8. The general administration and responsibility for the proper operation of the Judicial Retirement System and for making effective the provisions of this Act are hereby vested in the State Board of Trustees of the Employees Retirement System. The Board of Trustees shall promulgate such rules and provide for such forms as it may deem necessary in order to comply with the provisions of this Act. No retirement payments shall be made until the Chief Justice of the Supreme Court has certified to the Comptroller and to the Board of Trustees of the Employees Retirement System that a Judge is entitled to such payments.

**Assessment to Meet Administrative Costs**

Sec. 8a. Effective September 1, 1955, each Judge who is then participating, or who thereafter participates in the Judicial Retirement System shall pay each subsequent year that he is a member of the system, the sum of Two (\$2.00) Dollars, which amount shall be credited to the Employees Retirement Expense Fund to compensate for the costs of administering the Judicial Retirement System.

**Payments and Rights; Exemption From Tax, Etc.**

Sec. 8b. Retirement payments, annuities, refunded contributions, optional benefits, or any other right accrued or accruing to any per-

son under the provisions of this Act are exempt from any state, county, or municipal tax, levy, sale, garnishment, attachment, or any other process, and shall be unassignable except as provided in this Act.

**Repealer**

Sec. 9. All laws and parts of laws in conflict herewith are hereby repealed in so far as such laws conflict herewith.

**Partial Invalidity**

Sec. 10. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection or clause so declared unconstitutional.

[Acts 1949, 51st Leg., p. 181, ch. 99; Acts 1951, 52nd Leg., p. 334, ch. 205, § 1; Acts 1955, 54th Leg., p. 355, ch. 74, §§ 1, 2; Acts 1963, 58th Leg., p. 1134, ch. 439, § 1, eff. Aug. 24, 1963; Acts 1965, 59th Leg., p. 794, ch. 381, § 1, eff. June 9, 1965; Acts 1967, 60th Leg., p. 820, ch. 346, § 1, eff. June 8, 1967; Acts 1967, 60th Leg., p. 1808, ch. 692, § 1, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 882, ch. 296, § 1, eff. May 22, 1969; Acts 1969, 61st Leg., p. 1316, ch. 402, § 1, eff. May 30, 1969; Acts 1969, 61st Leg., p. 1471, ch. 435, § 1, eff. June 4, 1969; Acts 1971, 62nd Leg., p. 675, ch. 61, § 1, eff. April 20, 1971; Acts 1971, 62nd Leg., p. 1647, ch. 462, § 2, eff. May 27, 1971; Acts 1971, 62nd Leg., p. 1790, ch. 528, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1864, ch. 550, § 1, eff. June 1, 1971; Acts 1971, 62nd Leg., p. 3363, ch. 1025, § 1, eff. Aug. 30, 1971.]

Section 2 of Acts 1971, 62nd Leg., p. 676, ch. 61, provided: "If any phrase, clause, or subsection of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other subsections or application of the Act which can be given effect without the invalid subsection or application and to this end the subsections and applications of this Act are declared to be severable."

Section 2 of Acts 1971, 62nd Leg., p. 1790, ch. 528, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 6228c. Employees Retirement System and Teachers Retirement System; Credit for Prior Service Creditable Under Other System**

**Credit for Prior Service Creditable Under Either Act**

Sec. 1. Effective September 1, 1949, any person who is a member of either the Teacher Retirement System of Texas under the provisions of Chapter 470, Acts, Regular Session, 45th Legislature, (1937), as amended,<sup>1</sup> or the Employees Retirement System of Texas under the provisions of Chapter 352, Acts, Regular Session, 50th Legislature, (1947), as amended,<sup>2</sup> and if such person had also been a member of said System for a period of two (2) years prior to September 1, 1949, and/or if any person became a member of either System after September 1, 1947, but before September 1, 1949, and continued in such employment for a period of five (5) consecutive years, then such member shall be entitled to receive credit and resulting benefits for any and all prior service creditable as prior service for employment under the pro-

visions of either of said Acts and the respective Boards of Trustees are hereby instructed to review the prior service of the employees who were members on September 1, 1949, under either Act to permit said members to claim such additional prior service as provided herein and to include same in the prior service certificates to be issued; or if a prior service certificate has been issued, to adjust and effect an amended prior service certificate after such additional prior service claimed has been properly verified as provided in the provisions of the two Retirement Acts.

<sup>1</sup> Article 2922-1 (repealed; see, now, Education Code, § 3.01 et seq.).

<sup>2</sup> Article 6228a.

**Termination of Employment and Return to Employment Requiring Membership in Other System**

Sec. 2. In the event a member of one of said Retirement Systems shall terminate his employment and within five (5) years return to employment in a position requiring his membership in the other Retirement System, such member shall be entitled to retain his prior service and accumulated membership service credited to him under the first System and the total accumulated creditable service will be eligible for joint retirement under both Systems as provided herein. Provided, however, this shall not apply to any teacher or State employee who has withdrawn his accumulated contributions in either system.

**Waiver of Benefits; Withdrawal of Contributions**

Sec. 3. It is specifically provided, however, that no prior service as provided herein shall be granted by either System where said person has previously signed a waiver of all benefits under either System as provided in said Retirement System Acts; and provided further, that no prior service, and/or membership service shall be granted or made eligible for joint creditable service where such person voluntarily withdrew his contributions under either Retirement System because of termination of employment with the State and thereby cancelled his total accumulated service with such System as provided in each of the two Retirement System Acts.

**Retirement With Joint Creditable Service**

Sec. 4. Any person who has accumulated creditable service between both Systems as provided herein may retire with joint creditable service between the two Systems after completing:

a. Twenty (20) years of joint creditable service in Texas and upon attaining the age of sixty (60) years;

b. Twenty-five (25) years of joint creditable service in Texas, although not in service at the time the age of sixty (60) years is attained, but only when the member shall have attained the age of sixty (60) years and only in instances where the member has not withdrawn his contributions from either System;

c. Thirty (30) years of joint creditable service regardless of the age attained.

**Rules and Regulations; Transfers of Funds**

Sec. 5. The Board of Trustees of each of the Retirement Systems shall jointly establish rules and regulations to carry out the provisions of this Act; and the Comptroller is authorized, upon request by one System desiring to make its funds available through the other System, to transfer accrued funds and interest from one System to the other for eventual disbursement to the member concerned so as to effectuate the purposes of his Act.

**Repeals; Cumulative to Certain Laws**

Sec. 6. All laws or parts of laws in conflict herewith are amended insofar as a conflict exists with the provisions of this Act; and provided further, that the provisions of this Act shall be cumulative to the provisions of Chapter 470, Acts, Regular Session, 45th Legislature, as amended,<sup>1</sup> and Chapter 352, Acts, Regular Session, 50th Legislature, as amended.<sup>2</sup>

<sup>1</sup> Article 2922-1 (repealed; see, now, Education Code, § 3.01 et seq.).

<sup>2</sup> Article 6228a.

**Partial Invalidity**

Sec. 7. If any part of this Act is declared to be invalid or unconstitutional, the remainder of this Act shall not thereby be invalidated.

[Acts 1949, 51st Leg., p. 835, ch. 454.]

**Art. 6228c-1. Employees Retirement System and Teachers Retirement System; Retirement on Joint Creditable Service**

Any person who is a member of either the Teachers Retirement System of Texas or the Employees Retirement System of Texas shall be eligible to retire as such member of either system upon accumulation of twenty (20) years of joint creditable service as between two said systems upon reaching the age of sixty (60) years.

It is specifically declared to be the intention of the Legislature that these two systems shall cooperate fully each with the other in carrying out the purposes of this section. It is further specifically declared to be the intention of the Legislature to pass this section to carry out the will and intention of the people to the full extent in the passage of this Act, and this provision shall be mandatory on both boards and the administrative officers.

[Acts 1951, 52nd Leg., p. 257, ch. 152, § 5.]

**Art. 6228d. Death Before Retirement Under County Retirement Systems**

Sec. 1. Any member of a retirement, disability and death compensation fund established by any county of this State pursuant to Section 62 of Article XVI of the Constitution of Texas, by written designation filed in such form and with such officer or employee as the Commissioners Court shall prescribe, may provide that the contributions made by such member to such fund, together with interest (if

any) assigned to such contributions under such plan, shall be paid, in the event of the death of such member before retirement with an allowance of benefits from said fund, to such beneficiary as may be named by him in such written designation. The member may change the beneficiary so designated, or revoke a designation previously made by filing with the Commissioners Court, or such officer or employee as may be designated by such Court, a notice in writing in such form as the Court may prescribe, of such change or revocation.

In the event the member dies before such retirement, without so designating a beneficiary to receive his accumulated contributions and interest if any, or in the event the beneficiary so designated predeceases the member, such sums shall be paid to his estate. Payment of the accumulated contributions and interest of a member to the executor or administrator of his estate, or to his designated beneficiary, shall discharge the fund and its administrative officers from any other or further liability therefor.

Sec. 2. The provisions of this Act shall apply to all such retirement, disability and death compensation funds, whether such funds were established prior to the passage of this Act or subsequent to the passage of this Act.

[Acts 1949, 51st Leg., p. 1174, ch. 588; Acts 1951, 52nd Leg., p. 230, ch. 136.]

#### Art. 6228e. Former Texas Rangers and Their Widows

Sec. 1. (a) Pensions to Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall be paid to each former Texas Ranger who meets the following conditions:

(1) He served as a regular Texas Ranger, receiving compensation from the state, for an aggregate time of at least two (2) years prior to September 1, 1947. Service as a special Texas Ranger, although compensated from state funds, shall not be counted;

(2) He has not been eligible at any time for membership in the Employees Retirement System of Texas;

(3) He was not dismissed from service as a Texas Ranger for incompetence, misconduct, or breach of duty;

(4) He has reached the age of sixty (60) years.

(b) Pensions to Widows of Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall also be paid to the widow of each former Texas Ranger who meets the following conditions:

(1) The widow was legally married to a Texas Ranger or former Texas Ranger prior to January 1, 1957, and at the time of his death;

(2) Her husband met the conditions set out in paragraphs (1), (2), and (3) of subsection (a) of this Section.

Sec. 2. The pensions provided for in this Act shall be paid from the Confederate Pension

Fund created by Section 17, Article VII of the Constitution of Texas, upon warrants of the Comptroller of Public Accounts. Persons entitled to pensions under this Act shall make application to the Comptroller of Public Accounts. Said application shall recite facts showing that the applicant meets the qualifications set out in Sections 1(a) or 1(b) of this Act depending upon the status of the applicant, shall be accompanied by a certificate executed by the custodian of the service record of the applicant, or of the applicant's deceased husband as the case may be, showing the applicant's qualifications under paragraphs (1) and (3) of Subsection (a) of Section 1 of this Act, provided however, that such certificate shall not be required for applicants (or their widows) whose service in the Texas Rangers was for periods prior to the year 1922 and in such instances such applicants must satisfy the Comptroller of Public Accounts that such former Texas Ranger meets the qualifications set out in paragraphs (1) and (3) of Subsection (a) of Section 1 of this Act, and shall be sworn to by the applicant. Full monthly payment shall be made for each month commencing with the month in which the completed application is filed and ending with the month in which the recipient dies.

Sec. 3. There is hereby appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the period between the effective date of this Act and August 31, 1959.

There is further appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the biennium beginning September 1, 1959, and ending August 31, 1961.

[Acts 1959, 56th Leg., p. 629, ch. 283; Acts 1967, 60th Leg., p. 1048, ch. 459, § 1, eff. June 12, 1967.]

#### Art. 6228f. Payments of Assistance by State to Survivors of Law Enforcement Officers, etc., Killed in Performance of Duties

##### Declaration of Policy

Sec. 1. It is hereby declared to be the public policy of this State, under its police power, to provide financial assistance to the surviving spouse and minor children of paid law enforcement officers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employees of the Texas Youth Council, employees of the Rusk State Hospital for the Criminally Insane, paid firemen, members of organized volunteer fire departments and park and recreational patrolmen and security officers where such paid law enforcement officers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel, juvenile correctional employees of the Texas

Youth Council, employees of the Rusk State Hospital for the Criminally Insane, paid firemen members of organized volunteer fire departments, or park and recreational patrolmen and security officers suffer violent death in the course of the performance of their duties as paid law enforcement officers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, employees of the Texas Youth Council and the Rusk State Hospital for the Criminally Insane, paid firemen and members of organized volunteer fire departments, capitol security commissioned officers, campus security personnel commissioned as peace officers by authority granted under Section 3, Chapter 80, Acts of the 60th Legislature, Regular Session, 1967 (Article 2919j, Vernon's Texas Civil Statutes),<sup>1</sup> or park and recreational patrolmen and security officers.

<sup>1</sup> Repealed; see, now, Education Code § 51.203.

#### Definitions

Sec. 2. (a) As used in this Act:

(1) "Violent death in the course of performance of duty" means loss of life resulting from exposure to a risk inherent in the particular duty performed and which risk is one to which the general public is not customarily exposed.

(2) "Paid law enforcement officer" means a peace officer as defined in Article 2.12, Texas Code of Criminal Procedure, 1965, and includes game wardens who are employees of the State of Texas paid on a full time basis for the enforcement of game laws and regulations, campus security personnel commissioned as peace officers by authority granted under Section 3, Chapter 80, Acts of the 60th Legislature, Regular Session, 1967 (Article 2919j, Vernon's Texas Civil Statutes),<sup>1</sup> and park and recreational patrolmen and security officers of municipalities with a population exceeding 250,000 persons.

(3) "Members of organized police reserve or auxiliary units" means a person who, on a regular basis, assists peace officers in the enforcement of criminal laws.

(4) "Custodial personnel of the Texas Department of Corrections" means the class of employees of the Department of Corrections designated as custodial personnel by a resolution adopted by the Texas Board of Corrections.

(5) "Paid firemen" means a person who is employed by the State or its political or legal subdivision to render fire fighting services.

(6) "Organized volunteer fire departments" means a fire fighting unit consisting of not less than 20 active members with a minimum of 2 drills each month, each 2 hours long, and with a majority of all active members present at each meet-

ing, and which renders fire fighting services without remuneration.

(7) "Minor child" means a child who, on the date of the violent death of any person covered by this Act, has not reached the age of 21 years.

(b) For the purpose of this Act, "organized volunteer fire departments," as defined above, shall be considered agents of the city, county, district or other political subdivision which it serves if it receives any financial aid from such city, county, district or other political subdivision for the maintenance, upkeep, or storing of its equipment, or is designated by the governing body of the city, county, district or other political subdivision as its agent. For the purposes of this Act, organized police reserve or auxiliary units shall be considered agents of the city, county, district or other political subdivision which it serves if it is designated as such by the governing body of such city, county, district or other political subdivision.

(c) For the purpose of this Act, park and recreational patrolmen and security officers means those individuals involved in the exercise of police authority, enforcing parks and recreation department regulations, city ordinances and state laws within municipal recreation facilities.

<sup>1</sup> Repealed; see, now, Education Code § 51.203.

#### Assistance Payable

Sec. 3. In any case in which a paid law enforcement officer, capitol security commissioned officers, campus security personnel, a member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department and/or park and recreational patrolmen and security officers suffers violent death in the course of his duty as such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department, or park and recreational patrolmen and security officers, the State of Texas shall pay to the surviving spouse of such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council,

employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department or park and recreational patrolmen and security officers the sum of \$10,000 and in addition thereto, if such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department or park and recreational patrolmen and security officers shall be survived by a minor child or minor children, the State of Texas shall pay to the duly appointed or qualified guardian or other legal representative of each minor child the following assistance:

If one minor child—\$100 per month

If two minor children—\$150 per month

Three or more minor children—\$200 per month.

Provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to benefits shall terminate and any benefits payable under this Act on behalf of his minor brothers and sisters, if any, shall be adjusted to conform with the foregoing schedule if necessary.

#### Administration

Sec. 4. This Act shall be administered by the State Board of Trustees of the Employees Retirement System of Texas, under rules and regulations adopted by said Board. Proof of death claimed to be violent death in the course of performance of duty of a paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department or park and recreational patrolmen and security officer shall be furnished to said Board of Trustees in such form as it may require, together with such additional evidence and information as it may require.

#### Payment

Sec. 5. If it is determined that a claim under this Act is valid and justifies a payment or payments hereunder, it shall be the duty of the State Board of Trustees of the Employees Retirement System of Texas to cause the comptroller of public accounts to be notified of such determination and the comptroller upon receipt of the notification shall issue a warrant or warrants to the claimants in the proper amount from the fund appropriated for that

purpose. Payments on behalf of children shall be deemed to be payable dating from the first day of the first month following the death of a person to whose children payments may be made. If a claim is denied, the fact of such denial shall be sent to the person making the claim, or if a claim is being made on behalf of a minor child or children, shall be sent to the duly qualified guardian or legal representative of the child or children.

#### Appeals

Sec. 6. If a claim for payment to a surviving spouse or on behalf of a minor child or children is denied, such spouse or the legal representative of a minor child or children shall have the right to appeal such denial to a district court of the residence of the surviving spouse or minor child or children or to a district court in Travis County, Texas. Any appeal made pursuant to this section shall be made within 20 days after the date the surviving spouse or the person making the claim for the minor child or children receives notice of the denial of the claim. Proceedings on appeal shall be by trial de novo as in the appeals from the justice court to the county court.

#### Effect of Award

Sec. 7. Any finding that any benefit is payable to the surviving spouse and/or minor child or children of a person to whom this Act applies shall not be declaratory of the cause, nature or effect of such death for any other purpose whatsoever, and a finding that a particular loss of life is within the provisions of this Act shall not affect in any manner any other claim or cause of action whatsoever arising from or connected with such loss of life.

#### Benefits Non-Assignable

Sec. 8. No part of any benefit payable under this Act shall be transferable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law.

#### Duty of the Texas Board of Corrections

Sec. 9. It shall be the duty of the Texas Board of Corrections to adopt a formal designation spread on its minutes identifying the classes of persons who are custodial personnel of the Texas Department of Corrections. It is the intent of the Legislature in enacting this provision that the constitutional provisions of Section 51-d, Article III, of the Texas Constitution, be observed in order that there be no uncertainty about which persons are custodial personnel and which are not.

#### Application

Sec. 10. This Act shall not apply to the death of any law enforcement officer, capitol security commissioned officers, campus security personnel, custodial personnel of the Texas Department of Corrections, full-paid fireman, or park and recreational patrolmen and securi-

ty officers occurring before the effective date of this Act.

[Acts 1967, 60th Leg., p. 163, ch. 86, eff. April 27, 1967; Acts 1969, 61st Leg., p. 1513, ch. 456, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 34, ch. 16, §§ 1, 2, eff. March 11, 1971; Acts 1971, 62nd Leg., p. 2354, ch. 717, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 520, ch. 224, § 2, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1256, ch. 458, §§ 1, 2, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1763, ch. 643, § 1, eff. June 16, 1973.]

#### Art. 6228g. Texas County and District Retirement System

##### Establishment of System

Sec. 1. Pursuant to Section 62(c) of Article XVI of the Constitution of Texas, there is hereby established a System of Retirement, Disability and Death Benefits for all of the officers and employees of the several counties and other political subdivisions of the State, and of the various political subdivisions of the several counties of the State.

The System shall have the powers and privileges of a corporation, and shall be known as the "Texas County and District Retirement System," and by such name all of its business shall be transacted, all of its funds invested and all of its cash and other properties held.

##### Definitions

Sec. 2. Unless a different meaning is plainly indicated by their context, the following words and phrases as hereafter used in this Act shall have the following meanings:

1. "System" shall mean the Texas County and District Retirement System established by this Act, unless the term is accompanied by descriptive words clearly indicating a different retirement fund or system.

2. "Board" means the Board of Trustees of the Texas County and District Retirement System.

3. The term "subdivision" means and includes: the several counties of this State; all other political subdivisions of this State now existing or hereafter established, which consist of all of the geographical area of a county, or of all or parts of more than one county; the several political subdivisions of each county of this State which have the power of taxation; and all counties and cities operating a city-county hospital under the provisions of Chapter 383, Acts of the 48th Legislature, Regular Session, 1943, as amended.<sup>1</sup> The term also includes, for the purpose of providing similar coverage for its own employees, the Texas County and District Retirement System. But the term "subdivision" excludes all incorporated cities and towns, and all school districts and junior college districts established under the laws of this State.

4. "Governing body" shall mean the Commissioners' Court of a county; as to other subdivisions, it means the Court, Board of Trustees, Board of Directors,

Board of Managers, or other body which is empowered by law to raise or provide for raising of revenue for the subdivision, and for expenditure thereof.

5. "Participating subdivision" means any subdivision included within the System by virtue of determination made by its governing body that such subdivision shall participate in the System in accordance with the provisions of this Act.

6. "Employee" means any person who is certified by a subdivision as being regularly engaged in the performance of the duties of an elective or appointive office, or of any position of employment with the subdivision, which office or position normally requires actual performance of duty during not less than nine hundred (900) hours a year, and as receiving compensation from the subdivision for the performance of such duties. Upon the terms and conditions set out in Section 11A, the term "employee" includes any person regularly engaged in the performance of the duties of an elective or appointive State or district office who receives compensation, in addition to that received from the State of Texas, from the county or counties in which he serves, and the person with the approval of the respective subdivision shall be entitled to participate in the System to the extent of any additional compensation received from the participating subdivisions. The term "employee" does not include any person as to any period of service for which he would be eligible to be included in or entitled to receive credit in the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the Texas Municipal Retirement System, or any other pension fund or retirement system supported wholly or partly at public expense, except that nothing in this Act shall be construed as precluding simultaneous coverage of persons under the Federal Old Age and Survivors Insurance System or any successor thereto, or the Judicial Retirement System of Texas, and this System, by reason of the same service.

7. "Member" means any employee included in the membership of the System as provided in this Act.

8. "Service" means the act and period of performance of duty as an employee of the employing subdivision.

9. "Current service" means service as an employee of a participating subdivision rendered while a member of the System.

10. "Prior service" means service as an employee of a participating subdivision rendered prior to the effective date of participation of such subdivision in the System.

11. "Creditable service" means current service and prior service for which credit

is allowable to a member as provided in Section VI of this Act in measuring eligibility for benefits hereunder.

12. "Deposits" means the amounts required to be paid to this System by a member, exclusive of contributions required to be made to the expense fund for maintenance and operation of the System.

13. "Accumulated deposits" means the sum of all deposits received from a member then credited to his account with the System, together with interest allowed thereon as provided in this Act at the effective rate for the respective years during the period of their accumulation.

14. "Earnings" means an amount equal to the sum of the payments made to an employee for the performance of service, as certified to the System by the employing subdivision (in such form and manner as the Board may prescribe), plus the money value, as determined and certified by the governing body, of any meals, lodgings, fuel or other allowances provided to such employee in lieu of money.

15. "Current service earnings" means the earnings of an employee which do not exceed for the payroll period the rate of earnings as fixed and prescribed by the governing body of the participating subdivision (in accordance with subsection 1(c) of Section IV of this Act) as the maximum annual earnings upon which current-service deposits by employees shall be made.

16. "Average prior service earnings" shall mean the average monthly earnings received by an employee for service rendered to a participating subdivision during the thirty-six (36) months immediately preceding the effective date of participation of such subdivision in the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period; provided, however, that in calculating the average prior service earnings of any member, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings:

(a) the annual earnings prescribed by the governing body at the time of its determination to participate in the System as the maximum current service earnings for current service deposits and contributions; or

(b) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

17. "Actuarial Tables" means such experience, probability and other tables as are adopted by the Board as necessary to administration of this Act.

18. "Annuitant" means a person receiving an annuity from this System.

19. "Annuity" means a series of equal monthly payments payable at the end of each calendar month during the life of the annuitant. The first payment shall be due at the end of the first calendar month following the effective date of retirement of a member. No payment shall be made for any fraction of a month elapsing at the time of death.

20. "Current service annuity" means the annuity, actuarially determined, derived from reserve funds arising from a member's deposits, and an additional amount of reserve funds arising from the normal contributions of the employing subdivision, and allocable in the amounts and manner hereinbelow provided.

21. "Prior service annuity" means the annuity, actuarially determined, which can be provided from the accumulated allocated prior service credit of a member at retirement.

22. "Retirement" shall mean withdrawal from service with a retirement benefit granted under the provisions of this Act.

23. "Service Retirement" means the retirement of a member from service with a service retirement benefit as provided in Section VII of this Act.

24. "Disability Retirement" means the retirement of a member from service with a disability retirement benefit as provided in Section VII of this Act.

25. "Annuity Reserve" shall mean the present value computed upon the basis of such annuity or mortality tables as shall be adopted by the Board with regular interest, of all payments to be made on account of the annuity or benefit in lieu thereof, granted to a member under the provisions of this Act.

26. "Actuarial Equivalent" shall mean a benefit of equal value when computed upon the basis of such annuity or mortality tables as shall be adopted by the Board, and upon the assumption of regular interest.

27. "Current Interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on December 31 of such year before the transfer of interest to other funds, less an amount equal to three per centum (3%) of the sum of the mean amount in the Current Service Annuity Reserve Fund during such year and the mean amount in the Subdivision Prior Service Accumulation Fund during such year and the mean amount in the Prior Service Annuity Reserve Fund during such year by (2) an amount equal to the amount in the Subdivision Current Service Accumulation Fund at the beginning of such year plus the amount in the Endowment Fund at the beginning of such year and plus the sum of the accumulated

deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the System on December 31 of such year before any transfers for retirements effective December 31 of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than three per centum (3%).

28. "Regular Interest" means interest at the rate of three per centum (3%) per annum compounded annually.

29. "Beneficiary" means the person or persons designated as such by the member or annuitant in the last written designation on file with the Board, or if no person so designated survives, or if no designation is on file, the estate of the member or annuitant.

30. "Director" means the Executive Secretary appointed by the Board to manage and administer this System under the supervision and direction of the Board.

<sup>1</sup> Article 4494i.

#### Participation

##### Sec. 3. 1. Participation of Subdivisions.

(a) Each subdivision electing to participate in this System shall be included within and subject to the provisions of this System. Election to participate shall be by vote of the governing body of the subdivision in accordance with the usual procedure prescribed for other official actions of the subdivision. The governing body of any subdivision so electing shall notify the Board of such action within ten (10) days thereafter. Participation of any subdivision shall begin as of the first day of any month designated by the governing body and approved by the Board.

(b) The Board is hereby authorized to make and enforce rules with reference to the time of beginning of participation, and to notice, information and reports required of subdivisions electing to participate in this System.

(c) A subdivision which once elects to participate in the System may subsequently elect to discontinue the enrollment of new employees into the System, but shall never discontinue as to any members.

(d) Upon the terms and conditions provided in Section 11A, a subdivision which has elected to participate in the System may subsequently elect to include classes of employees not originally included in this Act, but included herein by amendment.

##### 2. Participation of Employees.

The membership of the System shall be composed as follows:

(a) All persons who are employees of a participating subdivision on the effective date of its participation in the System

shall become members of the System as of that date; provided, however, that this provision shall not apply to any of the following persons or groups of persons, to wit:

(1) Any person, except by his consent, who on the effective date of participation has a basis of employment with the subdivision which would be violated by the requirement that he become a member; but each such person, being notified that the governing body has determined that the subdivision shall participate in the System, shall be deemed to have consented and elected to become a member of the System, unless prior to the date fixed for participation he shall file with the governing body, written notice of his election not to become a member. Any person so electing not to become a member, may at any time thereafter during his employment by the subdivision and before he becomes 60 years of age, elect to become a member of the System as of the first day of the calendar month following filing by him with the Board and with the governing body, of notice of his wish to become a member; but in such event he shall enter the System without credit or claim of credit for prior service or other service, and shall for purposes of this Act be considered as a person entering the employment of the subdivision for the first time on the date he becomes a member of the System.

(2) Employees of any county hospital which hospital is governed by the terms and provisions of Chapter 5, Title 71, Vernon's Texas Civil Statutes, where the commissioners court of the county elects to preclude the employees of any such hospital from becoming members of the System. If employees of a county hospital are not included in the System, the commissioners court may thereafter elect to require such employees to become members of the System, and such employees shall become members of the System at the date fixed by the order for their participation; the rights and obligations of such employees and of the county as employer of such persons shall be determined as if such county hospital employees were employees of a separate subdivision.

(b) Any person not a member of this System, who becomes an employee for the first time of a participating subdivision after the effective date of participation of such subdivision, shall become a member of the System, upon the first day of the month following the date such person becomes an employee, provided he is then un-

der the age of 60 years but any such person who is then 60 years or over shall not be eligible to become a member of this System.

(c) Any person, not a member of this System, who has been an employee of a participating subdivision prior to the effective date of participation of such subdivision but who is not an employee of such participating subdivision on the effective date of participation of such subdivision, shall, if he again becomes an employee of such subdivision after the effective date of its participation become a member of the System upon the date he again becomes an employee, provided he is then under the age of fifty-eight (58) or as to persons fifty-eight (58) years or over, if such re-employment is within five (5) years after the effective date of the subdivision's participation, provided the extent of his prior service to such subdivision is equal to or in excess of the period by which his then attained age exceeds the age of fifty-eight (58) years; and otherwise such person shall not be eligible to become a member of this System.

(d) Any person who has been a member of this System and whose membership has terminated by withdrawal, shall, if he again becomes an employee of a participating subdivision, become a member of the System upon the first day of the month following the date such person again becomes an employee if he is then under the age of fifty-eight (58) years, but any such person who is then fifty-eight (58) years or over shall not be eligible to become a member of the System.

(e) Membership in the System shall cease and terminate if:

(1) A member is absent from service in a participating subdivision more than sixty (60) consecutive months prior to accumulating twenty (20) years of creditable service; provided, however, that during the time the United States is at war, and for a period of twelve (12) months thereafter, time spent by a member of the System (1) on active duty in the Armed Forces of the United States and their auxiliaries and/or in the Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto; or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall not be construed as absent from service insofar as the provisions of this Act are concerned but shall count toward membership service. "War" means declared or undeclared war or any con-

flict between the Armed Forces of the United States and any foreign armed forces.

(2) A member's service in a participating subdivision is discontinued and the member withdraws his accumulated deposits, or

(3) A member dies, or

(4) A member becomes an annuitant.

#### Revenue

#### Sec. 4. 1. Member deposits.

(a) Each subdivision electing to participate in this System shall designate by order or resolution of its governing body whether the deposits to be made to the System on account of current service of the employees of such subdivision shall be at the rate of four per centum (4%), five per centum (5%), six per centum (6%), or seven per centum (7%) of the current service earnings of such employees. The rate so designated to be effective at and after the date of participation is the "initial deposit rate" of such subdivision. The governing body of the subdivision may increase the deposit rate of the subdivision after it has been in effect for at least one (1) year. The rate of deposits once fixed by the governing body of a participating subdivision shall not be reduced until it has been in effect at least five (5) years. After a particular deposit rate has been in effect for at least five (5) years, the governing body of the subdivision may decrease the same to one of the other permitted rates of contribution provided that no reduction of a deposit rate shall be permitted, if the result thereof (according to calculations made by the actuary and approved by the Board) is to impair the ability of the subdivision to fund within twenty-five (25) years from date of participation all obligations arising from Allocated Prior Service Credits granted by the subdivisions, or, if the subdivision has undertaken to allow increased benefits or additional coverages have been pursuant to Subsection 11 of Section 6, if the proposed reduction would impair the ability of the subdivision to fund all such obligations (including those arising from Allocated Prior Service Credits granted by the subdivision) within twenty-five (25) years from the valuation date on the basis of which valuation the latest increase in benefits or coverage was undertaken by the subdivision.

Any reduction in deposit rate shall be effective only on the anniversary of the participation date or dates of the subdivision, and upon ninety (90) days prior written notice to the Board, and subject to its determination that the proposed reduction will not violate the limitations above set forth.

(b) Each member shall make deposits to the System at the rate of four per centum (4%), five per centum (5%), six per centum (6%) or seven per centum (7%) of current-service earnings as fixed by the governing body of the employing subdivision.

(c) The governing body of any participating subdivision by appropriate order or resolution, certified to the Board, shall provide that earnings of the several employees of the subdivision in excess of the sum of Three Thousand Six Hundred Dollars (\$3,600) in any year, or earnings in excess of any other greater multiple of One Thousand Two Hundred Dollars (\$1,200) per year, shall be excluded in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the amounts required to be paid in each month by the members as deposits shall not exceed deposits calculated on the basis of one-twelfth ( $\frac{1}{12}$ th) of the maximum annual earnings to be considered for retirement purposes as specified by such order or resolution. In like manner, the governing body may increase the amount of earnings on which such deposits and contributions shall be made.

(d) As to each and every payroll subsequent to the effective date of participation of the subdivision by which such person is employed, the employing subdivision shall cause to be deducted from the compensation due to each member of the System in the employment of the subdivision, the deposit which the member is required under this Act to pay to the System on account of such earnings.

(e) The Treasurer or proper disbursing officer of each participating subdivision shall make deductions from salaries of members as provided in this Act, and shall transmit monthly, or at such time as the Board shall designate, such payroll and other pertinent information in substance and form as the Board may prescribe, together with the amount specified to be deducted, which shall be paid to the Board at its home office. After making a record of all such receipts, the said Board shall deposit such receipts to the credit of the Employees Saving Fund, as hereinafter provided, and such funds shall be deemed as appropriated for use according to the provisions of this Act.

(f) For the purpose of efficient handling of members' deposits to be made as simple as possible, the Treasurer or other payroll disbursing officer of each participating subdivision shall prepare and file with the Director such reports as the Board may require, in such form and within the time specified by the Board.

(g) The records of the Board shall be open to public inspection and any member

shall be furnished with a statement of the amount to the credit of his individual account upon written request, provided that the Board shall not be required to answer more than one such request of a member in any one year.

(h) Each member shall pay, along with his deposits to the Employees Saving Fund, an expense contribution to the System at a rate, not exceeding fifty cents (50¢) per month per member, as is set by the Board, and certified to the participating subdivision.

## 2. Subdivision Contributions.

(a) Each participating subdivision shall make benefit contributions to the System each month equal to the amount paid to the System by all of its employees for the same payroll period.

(b) Until such time as the participating subdivision shall have fully funded the reserves for all Allocated Prior Service Credits granted by it, and all such reserves have been transferred to the Prior Service Annuity Reserve Fund as hereinafter provided, the benefit contributions to the System by each participating subdivision shall be allocated into normal contributions to the System, determined as provided in subsection (c) of this section, and prior service contributions to the System determined as provided in subsection (d) of this section.

(c) Each participating subdivision shall make payment of normal contributions to the Subdivision Current Service Accumulation Fund of the System each month of an amount equal to the per cent of the current-service earnings during such month of the members of the System employed by such participating subdivision which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent: (1) to maintain a reserve in such subdivision's account in the Subdivision Current Service Accumulation Fund equal to the present and prospective liabilities of such subdivision's account in the Subdivision Current Service Accumulation Fund, and (2) to amortize over a period of five (5) years the amount by which the present and prospective liabilities of such subdivision's account in the Subdivision Current Service Accumulation Fund was greater or less than the amount in such account on January 1st of the year preceding the then current year. "Present and prospective liabilities" as used in this subsection shall mean, at any time, an amount equal to that amount in the Employees Saving Fund standing to the credit of a participating subdivision's members at that time which will eventually be transferred to the Current Service Annuity Reserve Fund, adjusted proportionately for all such amounts in the Employees

Saving Fund for which the participating subdivision is obligated to provide reserves at retirement in a ratio other than one to one, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board.

(d) Each participating subdivision shall make payment of Prior Service Contributions to the Subdivision Prior Service Accumulation Fund of the System each month of an amount equal to a per cent of the current-service earnings during such month of the members of the System employed by such participating subdivision which per cent shall be the difference between the normal contribution rate, as above determined, and the subdivision benefit contribution rate as determined pursuant to paragraph (a) of subsection 1 of this section.

(e) The above percentages for each participating subdivision shall be determined annually from the most recent data available at the time of such determination, and shall be certified by the Board to each participating subdivision prior to the beginning of each calendar year.

(f) Each participating subdivision shall make payment of the expense contribution to the System each month of the same amount as the contributions made to the Expense Fund by all of its employees for the same payroll periods.

(g) On or before the fifteenth day of each month, each participating subdivision shall remit or cause to be paid to the System at its office the amounts of the normal contributions, prior service contributions and expense contributions due for the preceding month as herein provided.

(h) Unless otherwise provided for and paid by a subdivision all contributions of the subdivision shall be paid out of the fund from which earnings are paid to the members or out of the General Fund of the subdivision.

#### Method of Financing

Sec. 5. All the assets of the System shall be credited according to the purpose for which they are held to one (1) of eight (8) funds, namely, the Employees Saving Fund, the Subdivision Current Service Accumulation Fund, the Subdivision Prior Service Accumulation Fund, the Current Service Annuity Reserve Fund, the Prior Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

#### 1. The Employees Saving Fund:

The Employees Saving Fund shall be a Fund in which shall be accumulated the deposits from the compensation of members plus current interest earnings. Contributions to and

payments from the Employees Saving Fund shall be made as follows:

(a) Each participating subdivision shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, a sum of money equal to seven per centum (7%), six per centum (6%), five per centum (5%), or four per centum (4%) of his current-service earnings, as fixed by the governing body of the participating subdivision. In determining the amount earnable by a member in a payroll period, the Board may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from earnings for any period less than a full payroll period, if the employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member for any payroll period by the amount of twenty-five cents (25¢) or less.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the Board on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) During the time that the United States is at war (as hereinabove defined) and for twelve (12) months thereafter, a member of the System (1) in the Armed Forces of the United States or their auxiliaries or in the Armed Forces Reserve of the United States and their auxiliaries or in the service of the American Red Cross, as a result of having volunteered or having been drafted or conscripted thereinto, or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall be permitted to deposit each year to the System a sum not to exceed the amount

deposited by him to said System during the last year that he was employed as an employee under the provisions of this Act. The sum so deposited by such member and received by the System shall be deposited by said System in the Employees Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds deposited by the member while he was last employed as under the provisions of this Act. The subdivision by which such person was last employed shall make concurrent benefit contributions matching those so made by such member.

(d) Current interest on member's deposit shall be credited annually as of the thirty-first day of December and shall be allowed on the amount of the accumulated deposits standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year.

(e) Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act, upon the filing of formal application therefor, such member's accumulated deposits shall be paid to him and his account in the Employees Saving Fund closed.

Following the automatic termination of membership in the System for those members who have been absent from service in all participating subdivisions more than sixty (60) consecutive months, the Employees Saving Fund account of such members shall cease to draw interest.

(f) Should a member die before retirement the amount of his accumulated deposits shall be paid as provided in Section VII of this Act.

(g) Upon the retirement of a member his accumulated deposits shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund.

## 2. Subdivision Current Service Accumulation Fund:

The Subdivision Current Service Accumulation Fund shall be the Fund in which shall be accumulated all normal contributions made to the Texas County and District Retirement System by the participating subdivisions and from which shall be transferred to the Current Service Annuity Reserve Fund, at the retirement of a member, an amount equal to that proportion of the accumulated deposits of the member which the participating subdivision has agreed to provide.

Contributions to and payments from this Fund shall be made as follows:

(a) All normal contributions payable by participating subdivisions shall be paid into the Subdivision Current Service Accumulation Fund and shall be credited to

the accounts of the respective participating subdivisions in such Fund.

(b) Upon the retirement of a member, an amount equal to that proportion of his accumulated deposits in the Employees Saving Fund which the participating subdivision has agreed to provide shall be transferred from the Subdivision Current Service Accumulation Fund into the Current Service Annuity Reserve Fund. If the accumulated deposits of such retiring members have accumulated from deposits made while an employee of a single participating subdivision, such subdivision's account in the Subdivision Current Service Accumulation Fund shall be reduced by the amount so transferred. If such accumulated deposits arose from service in more than one participating subdivision, the accounts of the involved participating subdivisions in the Subdivision Current Service Accumulation Fund shall be reduced by the respective amounts chargeable to such participating subdivisions.

## 3. Subdivision Prior Service Accumulation Fund:

The Subdivision Prior Service Accumulation Fund shall be the Fund in which shall be accumulated all prior service contributions made to the System by the participating subdivisions for the purpose of providing the amounts required for payment of prior service annuities; and from which prior service annuities shall be paid to the extent herein provided.

Contributions to and payments from this Fund shall be made as follows:

(a) All prior service contributions payable by participating subdivisions shall be paid into the Subdivision Prior Service Accumulation Fund and shall be credited to the accounts of the respective participating subdivisions in such Fund.

(b) All payments under prior service annuities arising from allocated prior service credits granted by a participating subdivision shall be paid from this Fund and charged to such participating subdivision's account in this Fund subject to the following: The Board shall have the power to reduce proportionately all payments under prior service annuities arising from allocated prior service credits granted by any participating subdivision, at any time and for such period of time as is necessary so that the payments under such prior service annuities in any year shall not exceed the amounts available in such participating subdivision's account in the Subdivision Prior Service Accumulation Fund for payment of prior service annuities in such year.

(c) Whenever, at the end of the twenty-fifth or any subsequent year of participation, the amount accumulated in any subdivision's account in the Subdivision Prior Service Accumulation Fund shall equal or

exceed the reserve required, as of the end of such year, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, to meet all future payments in full under prior service annuities, arising from prior service credits granted by such participating subdivision, then in effect or to become effective thereafter, then,

(1) the amount of the reserve required at the end of such year under such prior service annuities as are then in effect shall be transferred from the Subdivision Prior Service Accumulation Fund to the Prior Service Annuity Reserve Fund and such subdivision's account in the Subdivision Prior Service Accumulation Fund shall be reduced by such amount so transferred; and

(2) future payments under such prior service annuities so transferred shall thereafter be paid by the System from the Prior Service Annuity Reserve Fund; and

(3) the payment of prior service contributions to the System by such participating subdivision shall be discontinued.

Thereafter, upon retirement of a member with prior service credits granted by such participating subdivision the amount of the reserve required as of the effective date of such retirement to meet all future payments in full under such member's prior service annuity shall be transferred from the Subdivision Prior Service Accumulation Fund to the Prior Service Annuity Reserve Fund and such municipality's account in the Subdivision Prior Service Accumulation Fund shall be reduced by such amount so transferred.

Thereafter, should it be determined, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, that the amount to the credit of such participating subdivision's account in the Subdivision Prior Service Accumulation Fund at the end of any year is less than the reserve required to meet all future payments in full under prior service annuities, arising from allocated prior service credits granted by such participating subdivision, to become effective after the end of such year, such subdivision shall resume payment of Prior Service Contributions, subject to the limitations of Section IV of this Act of such percentages as is required to amortize such deficiency over a period of five (5) years or less.

Whenever all prior service annuities, arising from allocated prior service credits granted by a participating subdivision have become effective and the reserves therefor transferred to the Prior Service Annuity Reserve Fund as provided above, any then remaining balance to the credit of such subdivision's account in the

Subdivision Prior Service Accumulation Fund shall be transferred to such subdivision's account in the Subdivision Current Service Accumulation Fund, and the subdivision's account in the Subdivision Prior Service Accumulation Fund closed.

#### 4. Current Service Annuity Reserve Fund:

The Current Service Annuity Reserve Fund shall be the Fund in which shall be held all reserves for current service annuities granted and in force and from which shall be paid all current service annuities and all benefits in lieu of current service annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of service or disability retirement, the accumulated deposits of a retiring member shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund as reserves for the current service annuity purchased by said member's deposits.

(b) An amount equal to that proportion of the accumulated deposits of each retiring member which the participating subdivision has agreed to provide at retirement, shall be transferred, upon such member's retirement, from the Subdivision Current Service Accumulation Fund as additional current service annuity reserves.

Transfers and payments from the Current Service Annuity Reserve Fund shall be made as provided in Section VII of this Act, upon the death, restoration to active service or removal from the disability list, of an annuitant retired on account of disability.

#### 5. Prior Service Annuity Reserve Fund:

The Prior Service Annuity Reserve Fund shall be the Fund in which shall be accumulated all transfers from the Subdivision Prior Service Accumulation Fund as herein provided. All prior service annuity payments under prior service annuities, the reserves for which have been transferred to this Fund, shall be paid from this Fund. The Board shall have the power to reduce proportionately all payments for prior service annuities payable from this Fund at any time and for such period of time as is necessary so that payments under such prior service annuities in any year shall not exceed the available assets in the Fund in such year.

Transfers from this Fund shall be made as provided in Section VII of this Act, upon the restoration to active service as an annuitant retired on account of disability.

#### 6. Interest Fund:

The Interest Fund is hereby created to facilitate the crediting of interest to the various other Funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds respectively. After interest-bearing funds have

been duly credited with interest for the year in the manner provided by this Act, the Board annually shall transfer all excess earnings from the Interest Fund to one or another of the several special accounts of the Endowment Fund as in its judgment the needs and condition of the System may require.

#### 7. Endowment Fund:

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds and assets accruing to the System which are not specifically required by other Funds established by this Act. The Endowment Fund shall consist of the following special accounts: the general reserves account; the distributive benefits account; the perpetual endowment account; and such other special accounts as the Board by resolution may establish.

(a) There shall be credited to the general reserves account all current interest allocable to the Endowment Fund, and there shall be transferred from the Interest Fund to said account such portion of the excess earnings, as in the judgment of the Board may be necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow regular interest on Funds entitled thereto under the provisions of this Act;

(2) to provide adequate reserves against special and general contingency requirements of other funds of the System; and

(3) to provide such amount, if available, as is required for the administrative expenses of the System in the ensuing year. The requirements of this account shall constitute a first charge against excess interest earnings standing to the credit of the Interest Fund at the end of any year. If in the judgment of the Board, the amount to the credit of the general reserves account is in excess of that needed to provide adequate reserves against insufficient earnings on investments, and special and general contingent requirements, then so much of any excess as remains as is required to pay administrative expenses for the ensuing year may be transferred to the Expense Fund.

(b) After the requirements of the general reserves account of this Fund have been satisfied, the Board may transfer any balance of excess earnings remaining in the Interest Fund at the end of a calendar year to a special account in the Endowment Fund to be denominated the "distributive benefits account." If in the judgment of the Board the amount to the credit of the distributive benefit account at the

end of the year is sufficient to warrant such action, the Board may by resolution:

(1) authorize the distribution and payment of all or part of said amount as a distributive benefit to the persons who were annuitants of the System on the last day of said calendar year in the ratio that the monthly benefit of each such annuitant bears to the total of all annuity payments made by the System for the final month of such year.

(2) authorize the distribution and application of all or part of said amount as supplemental interest earned by, and to be paid and credited to the respective individual accounts of members in the Employees Saving Fund, and to the respective accounts of participating subdivisions in the Subdivision Current Service Accumulation Fund, in the same manner that current interest was allowed to such accounts and in proportion to the current interest allowed such accounts for such calendar year.

(c) The perpetual endowment account shall be the account in which there shall be deposited and kept such funds, gifts and awards as the grantors thereof may designate as a perpetual endowment for the System.

#### 8. Expense Fund:

The Expense Fund shall be the Fund from which the expenses of administration and maintenance of the System shall be paid.

(a) The Director shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the Board for its review, amendment and adoption.

(b) The amount estimated to be required to meet the expenses of the System shall be paid from the general reserves account of the Endowment Fund to the extent available. The Board, as evidenced by a resolution of the Board recorded in its minutes, may transfer to the Expense Fund the amount required to cover the expenses as estimated for the year.

(c) If the amount estimated to be required to meet said expenses of the System is in excess of the amount in the general reserves account of the Endowment Fund which is available for administrative expenses, the Board, by a resolution recorded in its minutes, shall assess the estimated additional amount against and collect the same from the participating subdivisions and from members as Expense Fund contributions.

## Creditable Service

Sec. 6. 1. (a) Under such rules and regulations as the Board shall adopt, each person who is an employee of a participating subdivision on the effective date of participation of such subdivision and who becomes a member on such effective date shall be entitled to receive credit for "prior service" as defined in this Act. Any person who has been an employee of such a participating subdivision prior to the effective date of participation of such subdivision, but who is not in the service of such subdivision on the effective date of such subdivision's participation, shall be entitled to receive credit for "prior service" as defined in this Act, if he again becomes an employee of such participating subdivision within five (5) years after the effective date of such subdivision's participation and becomes a member as of the date of such reemployment and continues as an employee of such subdivision for a period of five (5) consecutive years.

(b) The governing body of a subdivision may order and direct that each of its employees who is serving in a public hospital, utility or other public facility which the subdivision is operating as successor to, or which the subdivision has otherwise acquired from a county, city or other public corporation or agency of government, shall be awarded and allowed prior service credit for the total number of months prior to date of participation during which such employee was employed in such hospital, utility or other facility during the period of its operation by the said predecessor governmental units or agencies as well as during the period of its operation by the participating subdivision; and in such event, the total period of such employment for which such employee is allowed prior service credit hereunder shall be considered service rendered to the participating subdivision for purposes of this Act.

In event any participating subdivision subsequent to date of participation, by contract, purchase or by legal succession shall acquire and become the operator of a public hospital, utility or other public facility theretofore operated by a county, city or other public corporation, the governing body of the participating subdivision may by order direct that persons who were employed in such hospital, utility or other facility at the time of acquisition of or succession to the same by the participating subdivision, and who enter or did enter employment of the participating subdivision at that time, shall be allowed prior service credit for the total number of months during which such employee was employed in such hospital, utility or other public facility during the period of its operation by the predecessor counties, cities and/or other public corporations.

(c) Prior service credits and Allocated Prior Service Credits derivable therefrom allowable under Subsection 1(b) above shall be calculated in the same manner and be limited by the same factors that are applicable to prior service credits allowed employees of other depart-

ments of the participating subdivision for equivalent periods of service.

2. Each member entitled to receive credit for "prior service" shall file a detailed statement of all prior service for which he claims credit with the Treasurer or other disbursing officer of the subdivision to which such service was rendered.

3. Subject to the above provisions and to such other rules and regulations as the Board may adopt, each participating subdivision shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed, and shall certify to the Board the length of "prior service" for which credit is allowed to each employee-member and the "Average prior service compensation" of each such employee-member.

4. After receipt of such certification from the participating subdivision, the Board shall issue prior service certificates certifying to each member the length of "prior service" with which he is credited, his "average prior service compensation" and his "allocated prior service credit" as herein defined. So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any member or participating subdivision may, within one (1) year from the date of issuance or modification of such certificate, request the Board to modify or correct such prior service certificate.

When membership ceases, such prior service certificate shall become void. Should a person whose membership has terminated again become a member, he shall enter the System as a member not entitled to credit for prior service.

5. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the current service rendered by him since he last became a member, and also, if he has a prior service certificate which is in full force and effect, the length of the service credited on his prior service certificate.

6. "Maximum Prior Service Credit" shall mean an amount equivalent to the accumulation at interest of a series of monthly payments for the number of months of prior service certified to in a member's Prior Service Certificate, each such monthly payment being equal to twice the subdivision's initial deposit rate multiplied by the member's "average prior service earnings." Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not to be allowed for parts of a year.

7. "Allocated Prior Service Credit" shall mean that percentage of the calculated "Maximum Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage to be the same for all of the

members of the subdivision and to be such that the total "Allocated Prior Service Credits" granted by the subdivision will not exceed in the aggregate an amount for which the prospective Prior Service Contributions of such subdivision will be adequate:

(a) to accumulate in such subdivision's account in the Prior Service Accumulation Fund by or before the end of the twenty-fifth (25) year of participation of such participating subdivision, a sum equal to the reserve required, according to calculations made by the actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board at the end of such period, to meet all payments in full due after the end of such period under prior service annuities arising from allocated prior service credits granted by such participating subdivision then in effect or to become effective thereafter, and

(b) to provide the amount required according to this Act to be paid during such period under prior service annuities arising from allocated prior service credits granted by such participating subdivision.

8. "Accumulated Allocated Prior Service Credit" shall mean the allocated prior service credit allowed a member as of the effective date of becoming a member, accumulated at regular interest from such date until the effective date of such member's retirement, but interest shall not be allowed for parts of a year.

9. "Current Service Credit" as used herein means an amount equivalent to a per centum (determined as hereinafter provided) of the deposits made to the System by a member during a given calendar year. Such per centum of deposits shall be 100% until the end of the calendar year in which five (5) years of participation by the employer-subdivision is completed: and for each calendar year thereafter such per centum shall continue to be 100% unless increased as permitted by and in conformity to the provisions of subsection 11 of this Section VI to 120% or some greater multiple of 20% as may be elected by the subdivision.

10. "Accumulated Current Service Credit" shall mean the "current service credit" allowed a member for a given calendar year, accumulated at interest (as provided in this subsection) from the end of such year until the effective date of such member's retirement. Interest shall be allowed for each respective year of the accumulation period at the rate of interest allowed by the System on members' deposits for such year, but interest shall not be allowed for part of a year.

11. (a) A participating subdivision may increase benefits theretofore granted, or credits upon which future retirements will be allowed, or may adopt any additional coverage allowed by this Act, in the time and manner, and subject to the conditions set out in this section.

(b) A participating subdivision may provide for increase in such benefits or credits or may

adopt additional coverage only after an actuarial valuation (as prescribed by Section 8, Section 4(e)) has been made as of December 31 valuation date which is co-terminal with, or subsequent to, completion of three or more years of participation from and after the later of the following dates, viz:

(1) the original date of participation by the subdivision involved; or

(2) the effective date of the latest preceding increase in benefits, or extension of coverage, allowed by such subdivision under this section.

(c) Any extension of coverage, or increase in benefits, may be made effective only on January 1 of a calendar year, and after the lapse of twelve months from the actuarial valuation date above mentioned.

(d) The increases in credits or benefits and additional coverages which may be adopted and allowed by the subdivision (conditioned that it may provide for funding the same as hereinbelow provided) are one or more of the following:

(1) Increase in Current Service Credits to be allowed thereafter, which may be increased by 20% multiples;

(2) Increase in Current Service Credits theretofore allowed, which may be increased by 20% multiples;

(3) Increase in Current Service Annuities in effect;

(4) Increase in Allocated Prior Service Credits theretofore granted and in effect;

(5) Increase in Prior Service Annuities in effect;

(6) Granting to any of its employees who has accumulated twenty (20) or more years of Creditable Service the right of deferred service retirement, as hereinbelow defined.

The terms "right of deferred service retirement" as used above means the right to remain in service and to file a written selection with the Retirement Board of an optional allowance and designated nominee (as provided in Subsection 3 of Section 7), and in the event the member thereafter dies while in service he shall be considered to have retired effective as of the last day of the calendar month next preceding the month in which death occurs. In event any person eligible for deferred service retirement shall die without having a written selection of optional allowance and designated beneficiary on file with said Board, or whose designated nominee under options one or two is not living at the date of death of the member; such member shall be considered to have elected Option Three retirement, or (at the election of his beneficiary) shall be considered as having been an active member at date of death and the beneficiary may thereby elect to

receive the accumulated contributions of the deceased member.

(7) Granting prior service credit for any periods of active service (not in excess of 36 months total), in the armed forces of the United States performed during the time the United States was involved in organized conflict with foreign forces, whether in a formal state of war or police action, to any person who was an employee of such subdivision immediately prior to the beginning of such service in the armed forces, who entered such service without intervening employment and who returned to the employment of the participating subdivision within one hundred eighty (180) days following his discharge from or release from active duty with the armed forces.

(e) No increase in prior service annuities, allocated prior service credits, current service annuities or current service credits theretofore allowed shall be permitted which would produce greater benefits for such completed service than would be provided for current service credits allowable for comparable current and future service.

(f) The amount of the additional required reserves on account of any increase in Current Service Annuities or increase or extension of Current Service Credits shall as of the 31st day of December immediately preceding the effective date of such increase or extension of coverage, be transferred from such subdivision's account in the Subdivision Prior Service Accumulation Fund account to the Current Service Annuity Reserve Fund and Subdivision Current Service Accumulation Fund accounts of such subdivision in the respective required amounts, calculated by the actuary and approved by the Board.

(g) No such proposed increase in benefits or credits, or proposed extension of coverage shall be permitted if the result thereof (on the basis of calculations made by the actuary and approved by the Board) would impair the ability of the subdivision to fund within twenty-five (25) years from date of the December 31 valuation referred to in 11(b) above all obligations including those arising from Allocated Prior Service Credits granted by the subdivision.

(h) No such increase in benefits or credits or proposed extension of coverage shall be permitted unless it is determined and certified by the actuary that at the particular December 31 valuation date referred to in 11(b) above, the allocable prior service credits and prior service annuity obligations of the subdivision then existing before any such increase, would be amortized on or before the 20th anniversary of said particular December 31 valuation date.

(i) No such increase in benefits or credits, or proposed extension of coverage shall be effective unless and until the proposal is ap-

proved by the Board as conforming to all of the requirements above.

12. A member may count as creditable service prior service in the Legislature of Texas if the member deposits in the Employees Savings Fund an amount equal to the current contribution percentage of the subdivision multiplied by the base figure of Four Hundred Dollars (\$400) per month for the total number of months he was a member of the Legislature. The subdivision shall make benefit contributions equal to the amount deposited by the member.

#### Benefits

##### Sec. 7. 1. Service Requirement Eligibility:

(a) Any member, after one (1) year from the effective date of his membership, shall be eligible for service retirement who (1) shall have attained the age of sixty (60) years and shall have completed at least twelve (12) years of creditable service, or (2) shall have completed thirty (30) years of creditable service.

(b) Application for service retirement shall be made to the Board setting forth the date the member desires his retirement to become effective provided: (1) such application shall be executed and filed at least thirty (30) and not more than ninety (90) days prior to the date on which such retirement is to become effective; (2) the effective date specified in the application shall be the last day of a calendar month, and shall not be a date preceding the termination of the member's employment with an employing subdivision.

(c) With the provision that no retirement shall be effective within one (1) year after the effective date of his membership, each member shall be retired from employment by all subdivisions on the last day of the calendar year in which the age of seventy (70) is attained, or upon the last day of the calendar year in which he completes twelve (12) years of creditable service, whichever shall last occur; provided, however, that in exceptional cases and for substantial cause such retirement may be deferred by mutual consent of the member and the employing subdivision from year to year for a period of not to exceed one (1) year at any time.

(d) Any member who has accepted service retirement shall be ineligible and disqualified to resume or continue service in any participating subdivision.

##### 2. Standard Service Retirement Benefit:

(a) A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be an allowance payable in equal monthly installments during the lifetime of the member. The "standard service retirement benefit" of a member

shall consist of (1) a current service benefit which is the actuarial equivalent of his current service annuity reserve, and (2) a prior service benefit to which is accumulated allocated prior service credits under his Prior Service Certificate, if any, entitles him under the provisions of this Act.

(b) The current service annuity reserve of the member shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum, from the Subdivision Current Service Accumulation Fund, equal to his accumulated current service credits at the time of his retirement.

(c) If he has a Prior Service Certificate in full force and effect, the prior service benefit shall be the actuarial equivalent of his Accumulated Allocated Prior Service Credit at the time of retirement; subject, however, to the power of the Board, upon recommendation of the actuary, to reduce payments for prior service annuities as provided in Section V of this Act.

### 3. Optional Service Retirement Benefits:

(a) In lieu of the "standard service retirement benefit" allowable under the preceding subsection, and provided that he shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his current service benefit in a reduced current service annuity payable to the member during his lifetime, but with the provision that:

Option One. Upon his death, the reduced current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option Two. Upon his death, one-half of the reduced current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option Three. In the event of his death before sixty (60) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the sixty (60) monthly payments have been made; or

Option Four. Some other benefit or benefits may be paid either to the member or to such person or persons

as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, together with the reduced current service annuity of the member shall be certified by the actuary to be the equivalent in actuarial value of the current service annuity reserve to which the member is entitled at the date fixed for his retirement.

(b) Any member who makes an effective election to have his current service benefit paid in accordance with Option One, Option Two, Option Three or Option Four shall likewise receive his prior service benefit, if any, in an adjusted annuity payable upon the same conditions and to the same beneficiary as that selected for his current service benefit, but with the further provision that all prior service benefits shall be subject to reduction by the Board under the circumstances provided for in Section V of this Act.

(c) Any member retiring for service who dies within thirty (30) days after the effective date of his retirement and who has not made an election to receive his annuity under an optional plan as herein provided shall be considered to have elected Option Three above or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

### 4. Vesting. Deferred Service Retirement:

Any member who shall have accumulated at least twenty (20) years of creditable service may withdraw from service prior to the attainment of the age sixty (60) and shall become entitled to retirement with a Service Retirement Allowance upon his attainment of the age of sixty (60) years, or at his option at any date subsequent to his attainment of said age but not later than the date of his mandatory retirement as set out in paragraph (c) of subsection 1 of this Section VII provided that such member is then living and has not withdrawn his contributions and provided that such retirement may not be effective prior to one year after the effective date of his membership and will be effective only as of the last day of a calendar month and will be effective not less than thirty (30) days or more than ninety (90) days subsequent to the execution and filing with the Retirement Board of written application therefor.

Any member who has accumulated thirty (30) or more years of creditable service shall have the right, until the date of his mandatory retirement as set out in paragraph (c) of subsection 1 of this Section VII, to remain in service and to file a written selection with the Retirement Board, in such form as the Retirement Board may prescribe, of an optional al-

allowance and designated nominee, as provided for in subsection 3 of this Section, and in the event such member thereafter dies while in service he shall be considered to have retired effective as of the last day of the calendar month next preceding the month in which death occurs or as of the end of one year after the effective date of his membership whichever date shall occur last; and any such member who has filed such selection of optional allowance and designated nominee, may at his option from time to time, prior to retirement or death, file an amended written selection of optional allowance and designated nominee. Any such member who has accumulated thirty (30) or more years of creditable service who dies in service without having a written selection of optional allowance and designated nominee on file with the Retirement Board or whose designated nominee under such written selection of Option One or Option Two of the options provided by subsection 3 of this Section VII last filed with the Retirement Board is not living on the date of death of the member, shall be considered to have elected Option Three above or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

#### 5. Disability Retirement Eligibility:

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with less than twelve (12) years of creditable service may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is the direct result of injuries sustained subsequent to the effective date of membership by external and violent means as a direct and proximate result of the performance of his duties, that such incapacity is likely to be permanent and that such member should be retired.

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with twelve (12) years or more of creditable service, who is not eligible for service retirement, may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the

further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

#### 6. Standard Disability Retirement Benefits:

Upon retirement for disability a member shall receive a disability retirement benefit consisting of a current service annuity, which shall be the actuarial equivalent of his current service annuity reserve, and a prior service annuity to which his Accumulated Allocated Prior Service Credit under his Prior Service Certificate, if any, entitles him under the provisions of this Act.

(a) His current service annuity reserve shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum from the Subdivision Current Service Accumulation Fund equal to his accumulated current service credits at the time of his retirement.

(b) If he has a Prior Service Certificate in full force and effect, the prior service annuity shall be the actuarial equivalent of his Accumulated Allocated Prior Service Credit at time of retirement. Upon the recommendation of the actuary, the Board shall have the power to reduce payments for prior service annuities as provided in Section V of this Act.

#### 7. Requirements and Conditions Applicable to Disability Benefits:

Once each year during the first five (5) years following retirement of a member on a disability retirement benefit, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board. Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

(a) Should the Medical Board report and certify to the Board that such disability annuitant is no longer physically or mentally incapacitated for the performance of duty, or that such disability annuitant is engaged in or is able to engage in a gainful occupation, and should the Board by a majority vote concur in such report, then his allowance shall be discontinued.

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating subdivision, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his current service annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Subdivision Current Service Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund at retirement and the reserves under his prior service annuity, if any, in the Prior Service Annuity Reserve Fund at that time shall be transferred to the Subdivision Prior Service Accumulation Fund. Upon restoration to membership, any Prior Service Certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the current service annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

#### 8. Return of Deposits Upon Other Terminations:

Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to the accumulation of thirty (30) or more years of creditable service, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the perpetual endowment account of the Endowment Fund.

#### Administration

Sec. 8. 1. This System shall be construed to be a Trust and shall be administered by a Board of Trustees consisting of nine (9) persons, who shall be appointed by the Governor with the advice and consent of the Senate, and shall hold office for a term of six (6) years; provided, however, that of the members of the first Board of Trustees, three (3) shall be appointed whose terms shall expire on December 31, 1969, three (3) shall be appointed whose terms expire December 31, 1971, and three (3) shall be appointed whose terms expire December 31, 1973. Members of the initial Board of Trustees shall be appointed from officers or employees of the subdivisions eligible to participate in the System; thereafter persons appointed to the Board of Trustees shall be members of the System who are employees (as defined in Subsection 6 of Section II) of a participating subdivision of the System, and any trustee (other than the initial Board of Trustees) who shall cease to be an employee of a participating subdivision shall thereupon vacate his office and shall be disqualified from continuing as a trustee of the System. The Board shall annually elect a chairman and vice-chairman from its membership; and it may designate the Director or one of its own members to serve as Secretary of the Board. All trustees shall serve without compensation, but shall be reimbursed for any reasonable traveling expenses incurred in attending meetings of the Board, authorized committee and association meetings, or in performance of other business for the System as authorized by the Board, and for the amount of any earnings withheld by any employing subdivision because of attendance of any Board meeting. Each trustee shall be entitled to one (1) vote on any and all actions before the Board for consideration at any Board meeting, and at least five (5) concurring votes shall be necessary for every decision or action by the Board at any of its meetings. Each trustee shall qualify by taking and subscribing the oath of office required of state officers.

2. The Board shall have, in addition to all other powers and duties arising out of this Act not otherwise specifically reserved or delegated to others, the following specific powers and duties and is hereby authorized and directed to:

(a) Hold regular meetings in March, June, September and December of each year, and such special meetings at such other times as may be called by the Director upon written notice to the trustees. Five (5) days notice of each special meeting shall be given to each trustee, unless such notice is waived. All meetings of the Board shall be open to the public and shall be held in the offices of the Board or in any other place specifically designated in the notice of any meeting.

(b) Consider and pass on all applications for annuities and benefits, authorize the granting of all annuities and benefits and suspend any payment or payments, all in accordance with the provisions of this Act.

(c) Certify all normal contribution rates, all prior service contribution rates and the current rate of interest as approved in writing by the actuary and notify all participating subdivisions thereof.

(d) Obtain such information from any member or from any participating subdivision as shall be necessary for the proper operation of the System.

(e) Establish an office in the Capital City or in one of the participating subdivisions. All books and records of the System shall be kept in such office.

(f) Appoint a Director for the purpose of managing this System, investing the Funds and carrying out the administrative duties of the System. The Board shall also appoint an actuary for the purpose of carrying out all the necessary actuarial requirements of the System; appoint an attorney; appoint a Medical Board; and employ such additional actuarial, clerical, legal, medical and other assistants as shall be required for the efficient administration of the System; and determine and fix the compensation to be paid.

(g) Have the accounts of the System audited at least annually by a Certified Public Accountant.

(h) Submit an annual statement to the governing body of each subdivision and to any member, upon request, as soon after the end of each calendar year as possible. Such statement shall include at least the following: a balance sheet showing the financial and actuarial condition of the System as of the end of the calendar year; a statement of receipts and disbursements during each year; a statement showing changes in the asset, liability, reserve and surplus accounts during the year; and such additional statistics as are deemed necessary for a proper interpretation of the condition of the System.

(i) The Board annually on December 31 shall allow regular interest on the mean amount in the Current Service Annuity Reserve Fund for the year then ending and shall allow regular interest on the mean amount in the Subdivision Prior Service Accumulation Fund for the year then ending and shall allow regular interest on the mean amount in the Prior Service Annuity Reserve Fund for the year then ending and shall allow current interest as defined in Section II of this Act on the amount in the Subdivision Current Service Accumulation Fund at the beginning of such year and on the amount in the Endowment Fund at the beginning of such year and on an amount

in the Employees Saving Fund equal to the sum of the accumulated deposits standing to the credit at the beginning of such year of all members included in the membership of the System on December 31 of such year, before any transfers for retirement effective December 31 of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the Board on December 31 of each year from the moneys of the System held in the Interest Fund, provided that current interest shall not be at a rate greater than three percent (3%) per annum and that any excess earnings over such amount required shall be paid to one or another of the several accounts of the Endowment Fund as provided in Section V of this Act.

(j) Accept any gift, grant or bequest of any money or securities for the purposes designated by the grantor, if such purposes are specified as providing an endowment or retirement benefits to some or all of the participating employees or annuitants of this System, or if no such purposes are designated, for deposit to the credit of the Endowment Fund.

(k) Determine the limitations on the amounts of cash to be invested in order to maintain such cash balances as may be deemed advisable to meet payments of benefits and expenses, and invest the remaining available cash in securities in accordance with Subsection (7) of this Section.

(l) Keep in convenient form such data as shall be necessary for all required calculations and valuations as required by the actuary and keep a permanent record of all the proceedings of the Board.

(m) The Board shall have power to incur indebtedness and to borrow money upon the faith and credit of the System for the purpose of paying and providing for the payment of the expenses incident to the operation of the System, and to renew, extend or refund such indebtedness heretofore incurred or hereafter incurred, and for such purposes to issue and sell the negotiable promissory notes or negotiable bonds of the System, maturing within twenty (20) years from date of issuance, and bearing interest at a rate not to exceed six percent (6%) per annum; and such notes or bonds shall be a charge against and shall be payable from the Expense Fund of the System, hereinabove provided for, but shall expressly provide that the same shall never be held or considered to be an obligation of the State of Texas; but the total indebtedness against the Expense Fund of the System shall never exceed at any one time the sum of One Hundred Thousand Dollars (\$100,000).

(n) Establish such rules and regulations not inconsistent with the provisions of the

Act and generally carry on such other reasonable activities as are deemed necessary or desirable for the efficient administration of the System.

3. The Director shall be in charge of the technical administration of the System and shall have such additional powers and duties as are properly delegated by the Board.

4. The Board shall designate an actuary who shall be the technical adviser of the Board on matters regarding the operation of the Funds created by the provisions of this Act and shall perform such other duties as are required in connection therewith.

As soon as practicable after the establishment of the System, and at least once in each five (5) year period thereafter, the actuary shall make such general investigation of the mortality, and service experience of the members and annuitants of the System as he shall recommend and on the basis of such investigation, he shall recommend for adoption by the Board such tables and rates as are required.

On the basis of such tables and rates as the Board shall adopt, the actuary shall:

- (a) Calculate the normal contribution rate for participating subdivisions;
- (b) Calculate the prior service contribution rate for participating subdivisions;
- (c) Calculate the current interest rate;
- (d) Certify the amounts of each annuity and benefits granted by the Board; and
- (e) Make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

5. The Board shall designate an attorney who shall be the legal adviser to the Board and shall represent the System in all litigation.

6. The Board shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the System. The physicians so appointed by the Board shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board its conclusions and recommendation upon all the matters referred to it.

7. The assets of the System in excess of the amount of cash required for current operations as determined by the Board, shall be invested and reinvested in the following types of securities:

- (a) Interest-bearing bonds or other evidences of indebtedness: of the State of Texas, or of any county, school district, city or other municipal corporation within the State of Texas; of the United States

or of any authority or agency of the United States, or any such securities which are guaranteed as to the payment of principal and interest by the United States or by any authority or agency of the United States.

- (b) Interest-bearing bonds, notes or other evidence of indebtedness issued by any corporation incorporated under the laws of the United States or of any state, and which obligations are of a company whose stocks are eligible hereunder as investments for the System, or which obligations are rated A or better by one or more nationally recognized rating agencies to be determined by the Board.

In addition to the above listed securities, the Board may invest not exceeding twenty percent (20%) of the total of the assets of the System in preferred stocks and common stocks of companies incorporated within the United States, which have paid dividends on its common stock for ten (10) consecutive years or longer immediately prior to the date of purchase of such securities and which, except for bank and insurance company stocks, are listed upon an exchange registered with the Federal Securities and Exchange Commission or its successors; and provided further that not more than one percent (1%) of the assets of the System shall be invested in stocks issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned by the System. In making each and all such investments the Board shall exercise the judgment and care under the circumstances which men of prudence, discretion and intelligence exercise in the management of their own affairs, taking into consideration not only the probable income derivable from such securities but as well the probable safety of the capital investment.

The Board shall have full power to sell, assign, exchange, or trade and transfer any of the securities in which the funds of the System at any time may be invested, and to use or reinvest the proceeds as, in the Board's judgment, the needs of the System require.

8. All money received by the System shall immediately be deposited with a depository for the account of the System. All disbursements shall be made only upon vouchers signed by the person or persons designated for such purpose by resolution of the Board, and the depository is hereby authorized to pay the vouchers or checks so signed. The depository shall accept all warrants so signed and shall be released from liability for all payments made thereon. Checks or warrants shall be drawn only upon proper authorization by the Board, properly recorded in the official minute books of the meetings of the Board. All securities of the System when received, shall be deposited in trust with a depository designated by the Board and the depository shall provide adequate safe deposit facilities for their preservation.

9. The assets of the System shall be invested as one Fund, and no particular person or subdivision shall have any right in any specific security or in any item of cash other than an undivided interest in the whole, as set forth in the provisions of this Act.

#### Depositories

Sec. 9. In handling the funds of the System created by this Act, the Board shall have and is hereby given all the power, authority and duties granted the State Depository Board and shall designate depositories to qualify and serve such System in accordance with the provisions of Chapter I, Title 47, Revised Civil Statutes of Texas of 1925, together with all amendments thereto.<sup>1</sup>

<sup>1</sup> Article 2525 et seq.

#### Merger of Existing County Systems

Sec. 10. 1. The voluntary merger into the System established by this Act (in this Section called the "state system") of pension systems heretofore established under Subsection (b) of Section 62 of Article XVI of the Constitution of Texas (in this Section called the "local system") is hereby authorized upon the terms and conditions stated in this section, and upon such additional terms and conditions as may be prescribed by the Board of Trustees of the state system, and after approval of the merger proposal by the governing body of the subdivision.

2. The terms of the merger agreement shall be generally consistent with the provisions of this Act pertaining to participation of subdivisions which do not now have any pension system for their employees, but the provisions of this section shall govern merger of such existing systems in event of variance from other provisions of this Act. The provisions of this Act shall apply to the local system subdivision and its employees after merger except as may be otherwise provided in this Section X.

3. In addition to those persons who conform to the definition of "employee" as set out in Subsection 6 of Section II, each person who at the effective date of merger, by virtue of the position or office then held is considered by the local system to be an employee of the subdivision, shall be classified by the state system as an employee of said subdivision while such person continues to occupy said position or office.

4. All persons who are then members of the local system at the effective date of merger shall become members of this state system. The number of months of creditable service allowed by the local system to the member for service to the date of merger shall be allowed as creditable service by the state system.

5. All persons who conform to the definition of "employee" as set out in Subsection 6 of Section II, but who were not eligible for membership in the local system as established, and are not members of the local system at the date of merger, shall become members of the state system under the merger agreement, un-

less such person executes a waiver of membership in the time and manner prescribed below: provided, however, that no employee who is fifty-eight (58) years of age or more at date of merger shall be eligible for membership unless his service to such subdivision prior to the date of merger is equal to or is in excess of the period by which his then attained age exceeds the age of fifty-eight (58) years.

Any person who becomes a member of the state system as of the date of merger under this Subsection 5 shall not be allowed any credit for service prior thereto except upon the following conditions:

If, for all months during which such person performed service as an employee (as defined in subsection 6, Section II, above) of the subdivision between the time the local system was established and the date of merger, such person shall pay to the state system (within 90 days after date of merger) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to make to the local system, and if the subdivision pursuant to the merger agreement contributes to the state system within the 90-day period an equal amount, then in such event:

(a) the sum so deposited by such member with the state system shall be deposited by it to the credit of such member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in subsection 9(a) below as to transfer upon merger of individual deposits of members of the local system;

(b) the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Prior Service Accumulation Fund in the manner provided in subsection 9(c), below; and

(c) such member shall thereupon receive credit for all service to the subdivision antedating the effective date of merger.

Any person not a member of the local system, but who would become a member of the state system under the terms of this subsection may elect not to become a member if within thirty (30) days after the effective date of the merger agreement, he shall execute and file with the Director of the state system a written waiver of membership in such form as the Board may prescribe. Any such person who files such a waiver of membership may apply for membership in the state system as of the first day of any month thereafter, if the person would then be eligible for membership in the system as a beginning employee of the subdivision, and such person may thereupon become a member of the system but without credit for any service antedating date of membership.

6. Persons who are employees of the subdivision at the effective date of merger but who are not members of the local system by reason

of prior voluntary election not to participate, or because of prior withdrawal from the local system, may apply for membership in the state system as of the effective date of merger or as of the first day of any month thereafter, if the person would then be eligible for membership in the system as a beginning employee of the subdivision, and such person may thereupon become a member of the system but without credit for any service antedating date of membership.

7. In determining the status and rights of persons who are members of the local system, but who are not employees of the subdivision at the time of the merger, the provisions of this Act regarding termination of the membership because of absence from service and membership status upon re-employment shall apply as if the local system at all pertinent times had been merged with the state system.

8. All assets of the pension system being merged into this System shall be accepted by the System on the following basis:

(a) The value of every United States government bond will be determined on an amortized basis to yield three and one-fourth per centum ( $3\frac{1}{4}\%$ ) per annum or on a market value basis, whichever is greater, and all other bonds shall be accepted at their market value, as of the date of merger;

(b) Cash shall be valued at actual value and time deposits shall be valued at face plus accrued interest.

9. Upon merger, the total assets of the local system shall be transferred to the state system, valued as provided in Subsection 8 above, and such assets shall be credited as follows:

(a) An amount equal to the sum of the accumulated deposits of the individual members of the local system will be credited to the Employees Saving Fund of the state system. The state system will establish individual accounts for all such members and will credit to such individual accounts the respective accumulated deposits of the individual members as of the effective date of merger. No current service credits shall accrue in this System to the members of the local system on account of the accumulated deposits so transferred and credited upon merger.

(b) An amount equal to the required annuity reserve, based on such annuity tables as shall be adopted by the Board with regular interest, for current service annuities in effect in the local system as of the date of merger shall be credited to the Current Service Annuity Reserve Fund of this System and such current service annuities shall thereafter be obligations of and paid from the Current Service Annuity Reserve Fund of this System.

(c) The remaining assets of the local system will be credited to the subdivision's account in the Subdivision Prior Service

Accumulation Fund of the state system for the partial funding of the obligations assigned to such account in accordance with this Act.

(d) Each member transferred under the merger, and each person who becomes a member at the date of merger and qualifies for creditable service antedating merger as provided by Subsection 5 above, will be given an "allocated special prior service credit" determined as provided in paragraphs (e) and (f) following.

(e) "Maximum Special Prior Service Credit," as used in this Section shall mean an amount equivalent to the accumulation at interest of a series of monthly payments for the number of months of all creditable service allowed to the member pursuant to the merger agreement for service to the date of merger, each such monthly payment being equal to twice the subdivision's initial deposit rate multiplied by the member's "average local system earnings," with such accumulation then being reduced by an amount equal to the individual member's accumulated deposits transferred on merger or paid in by the member in accordance with Subsection 5 of this Section. Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not allowed for parts of a year.

"Average local system earnings" as used in this subsection means the average monthly earnings received by an employee for service rendered to the local system subdivision during the thirty-six (36) months immediately preceding the effective date of merger of such subdivision's local system into the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period, or if there be no such service during said thirty-six (36) months, the average shall be computed for the number of months of service rendered to the local system subdivision during the twenty-four (24) months immediately preceding said thirty-six (36) months; provided however, that in calculating the "average local system earnings" of any employee, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings: (i) the annual earnings prescribed by the governing body at the time of merger as the maximum current service earnings for current service deposits and contributions; or (ii) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

(f) "Allocated Special Prior Service Credit" as used in this section shall mean

that percentage of the calculated "Maximum Special Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage, except as hereinafter provided in this paragraph, to be the same for all of the members of the subdivision and to be such that the total "Allocated Special Prior Service Credits" granted by the subdivision will not exceed in the aggregate an amount for which the assets credited to the Prior Service Accumulation Fund on merger and the prospective Prior Service Contributions of such subdivision will be adequate:

(i) to accumulate in such subdivision's account in the Prior Service Accumulation Fund by or before the end of the twenty-fifth (25th) year of participation of such participating subdivision or within the period of time which would have been required to fund the unfunded liability of the local system if greater, a sum equal to the reserve required, according to calculations made by the actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board at the end of such period to meet all payments in full due after the end of such period under prior service annuities chargeable to such participating subdivision then in effect or to become effective thereafter, and

(ii) to provide the amount required according to this Act to be paid during such period under prior service annuities chargeable to such participating subdivision.

It is specifically provided that the allocated special prior service credit granted to any member at merger shall be not less than an amount which together with the amount of such member's accumulated deposits at the time of merger will provide a benefit at retirement equal to that which under the provisions of the local system in effect at time of merger, he would have been entitled to receive at retirement based upon service prior to date of merger.

10. Prior to approval by the Board of the merger agreement, the governing body of the subdivision shall:

(a) Designate the initial deposit rate to be effective upon participation in the state system, in the manner provided in Subsection 1(a) of Section IV, above;

(b) Determine the maximum earnings upon which current service deposits shall be made, as provided in subsection 1(c) of Section IV, above.

If the local system has been in effect more than five years (and subject to the limitations below set out), the governing body of the subdivision may also provide

(substantially in the manner delineated in subsection 11 of Section VI, above):

(c) for proportional increases in prior service annuities theretofore granted by the local system;

(d) for proportional increases in current service annuities theretofore granted by the local system;

(e) for allowance of current service credits after merger in excess of 100% of deposits as provided in subsection 9 of Section VI, above.

No proposal for merger shall be approved until actuarial studies shall have been made by the local system at its expense but in accordance with specifications approved by the Board, and provided that such studies establish to the satisfaction of the Board that the obligations undertaken by or on behalf of the subdivision will be discharged at the time and in the manner provided by this Act and by the merger agreement, and that the obligations incurred by the subdivision in the Prior Service Accumulation Fund will be fully funded within twenty-five (25) years from date of merger, or within such longer period as would have been required to amortize the unfunded liability of the local system as then existing.

11. No retirement of persons becoming active members of the state system by reason of merger, shall become effective until 120 days after the effective date of merger.

12. From and after date of merger, the rights and obligations of the employing subdivision and of persons who as its employees or pursuant to the merger agreement become members of the state system shall be governed by the provisions of Sections I through IX of this Act, except as modified by the terms of the merger agreement and by the provisions of this Section.

#### Merger of Other Local Systems

Sec. 11. The voluntary merger into the state system created by this Act of pension systems heretofore or hereafter established for employees of subdivisions as hereinabove defined (exclusive of such systems as are included within the provisions of Section X, above) is authorized to be effected upon terms and conditions to be prescribed by the Board of Trustees of this state system, and generally in accordance with the provisions of Section X, above, so far as applicable.

#### Optional Coverage of Employees Receiving Supplemental Compensation From Participating Counties

Sec. 11A. 1. The governing body of any participating county which pays compensation from county funds to a person regularly engaged in the performance of the duties of an elective or appointive State or district office in addition to that received from the State of Texas, may by order of the governing body provide that the persons shall be considered employees of the county, and as such eligible for member-

ship in the System to the extent of the compensation paid the person by the county.

2. All persons who on the effective date specified in the order are within the class designated to be included in the System by the order of the governing body of any participating subdivision under this section, shall become members of the System at the effective date specified in the order unless the person executes a waiver of membership in the time and manner prescribed below. Any person thereafter employed for the first time by the subdivision in any covered employment shall become a member of the System at the date of his employment if he is at that date less than fifty-eight (58) years of age.

3. Any person who would become a member of this System by virtue of an order adopted by the governing body of a participating subdivision under this section may elect not to become a member if within thirty (30) days after the effective date specified in the order, he executes and files with the Director of the System a written waiver of membership in such form as the Board may prescribe. Any person who files a waiver of membership may apply for membership in the System as of the first day of any month thereafter, if the person would then be eligible for membership in the System as a beginning employee of the subdivision, and the person may thereupon become a member of the System but without credit for any service antedating the date of membership.

4. Any person who becomes a member of this System pursuant to this section shall not be allowed credit for service from the date of participation of the county to the effective date specified in the order adopted by the governing body pursuant to this section, unless within ninety (90) days after the date so specified:

(a) For all months during which the person performed service as an employee, the member shall pay to this System a sum equal to the deposits which a member of the System drawing the same compensation from the county during the same period was required to make to the System; and

(b) The county within the ninety (90) day period contributes to the System an amount equal to the deposits made by the member under Paragraph (a) of this subsection.

In the event the deposits required under this subsection are made within the time specified, the sum so deposited with the System by the member shall be credited to the member's individual account in the Employees Saving Fund, and the member shall be given current service credit for each month of service from which the deposits derive; and the matching deposits made by the county shall be deposited to its account in the Subdivision Current Service Accumulation Fund.

5. Any person who becomes a member of the System by virtue of this section as an employee of a county which did not operate and maintain a local system (as defined in Section 10, above) prior to the date of participation of the county in this System, and who makes and causes the subdivision to make the deposits in the amounts and within the time prescribed by Subsection 4, above, shall be entitled to receive credit for "prior service" rendered the subdivision, and upon certification of the prior service in the manner provided in Subsection 1 of Section 6, above, shall be allowed an "Allocated Special Prior Service Credit" determined in the same manner and on the same percentage of Maximum Prior Service Credit as was used in determining the Allocated Prior Service Credit of those employees of the subdivision who became members of this System on the date of participation of the subdivision.

6. Any person who becomes a member of the System by virtue of this section as an employee of a county which prior to its participation in this System operated and maintained a "local system" (as defined in Section 10) that was merged into this System pursuant to Section 10 shall not be allowed credit for service rendered the subdivision prior to the effective date of the merger, except upon the following conditions:

(a) The member and the subdivision make the deposits in the amounts and within the time prescribed by Subsection 4, above, to entitle the member to current service credit as provided in Subsection 4; and

(b) For all months during which the person performed service as an employee (as defined in Subsection 6, Section 2) of the subdivision between the time the local system was established and the date of merger, the person shall pay to the State system (within ninety (90) days after the effective date specified in the order of the governing body adopted under this section) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to make to the local system, and the subdivision shall contribute to the State system within said ninety (90) day period an equal amount to match the members' deposits.

In the event the deposits required under this subsection are made within the time specified, the sum so deposited by the member with the State system shall be deposited by it to the credit of the member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in Subsection 9(a) of Section 10, as to the transfer upon merger of individual deposits of members of the local system; the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Prior Service Accumulation Fund in the manner provided in

Subsection 9(c) of Section 10; and the member shall receive credit for all service to the subdivision antedating the effective date of merger, and will be given an "Allocated Special Prior Service Credit" determined in the same manner and on the same percentages of Maximum Special Prior Service Credit as was used in determining the Allocated Special Prior Service Credit of employees of the county who became members of the State system at the effective date of the merger.

#### Miscellaneous

Sec. 12. 1. Each member shall, by virtue of the payment of the deposits required to be paid to this System, receive a vested interest in such deposits.

2. Venue of any action by or on behalf of the System or the Board against any participating subdivision or against any officer or Board of Officers of any participating subdivision to compel accounting by such subdivision or by such officer or officers of such participating subdivision for any sums due by the participating subdivision to the System, or due to the System as contributions of members, or to require withholding of and accounting for sums due from members, shall lie in Travis County, Texas, as well as in the county in which such subdivision is situated.

3. All annuities and other benefits payable under the provisions of this Act and all accumulated credits of employees in this System shall be unassignable and shall not be subject to execution, garnishment or attachment.

4. Any person who shall knowingly make any false statement in any report or application to the System, in any attempt to defraud the System, or who shall knowingly make a false certificate of any official report to the System, shall be guilty of a misdemeanor and shall be punished therefor by fine of not less than One Hundred Dollars (\$100) and not more than One Thousand Dollars (\$1,000), or by confinement in jail for a term of not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment.

5. The Board shall require and secure at the expense of the System such fidelity bond as it may deem proper for the faithful performance of the duties of the Director, and may likewise require bonds for other employees of the System.

#### Severability Clause

Sec. 13. If any section, paragraph, sentence or clause of this Act is held to be invalid or unconstitutional for any reason, the remaining articles, sections, paragraphs, sentences and clauses shall continue in full force and effect and shall be construed thereafter as being the entire provisions of this Act.

[Acts 1967, 60th Leg., p. 240, ch. 127, eff. May 5, 1967; Acts 1969, 61st Leg., p. 1707, ch. 558, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 1049, ch. 213, §§ 1 to 4, eff. May 17, 1971; Acts 1971, 62nd Leg., p. 1053, ch. 214, § 1, eff. May 17, 1971; Acts 1971, 62nd Leg., p. 1780, ch. 522, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1971,

62nd Leg., p. 3407, ch. 1039, §§ 1, 2, eff. June 17, 1971.]

Section 4 of Acts 1971, 62nd Leg., p. 1780, ch. 522, provided: "In the event any section, subsection, or provision of this Act shall be held and adjudged unconstitutional or invalid for any reason, such adjudication shall not affect or invalidate any of the other or remaining provisions of this Act."

#### Art. 6228h. Assumption of Pension Liabilities of Participating Subdivision by Annexing Governmental Entity

Sec. 1. Should any participating subdivision as defined under the provisions of Chapter 127, Acts of the 60th Legislature, Regular Session, 1967, as amended,<sup>1</sup> establishing and regulating the Texas County and District Retirement System, be annexed into, merged with, or in any manner absorbed by a municipality or other governmental entity, such succeeding entity shall assume, provide for and continue all existing pension rights of the employees of such subdivision, and shall further succeed to the rights of such subdivision in the assets of such system.

Sec. 2. The crowded condition of the calendars, and the need for enacting at the earliest time the above amendment, create an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended; and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

[Acts 1971, 62nd Leg., p. 992, ch. 179, eff. Aug. 30, 1971.]

<sup>1</sup> Article 6228g.

#### Art. 6228i. Proportionate Service Retirement Benefits

##### Purpose

Sec. 1. The purpose of this Act is to provide proportionate service retirement benefits to eligible members who shall have performed service and made contributions in more than one class of membership in the state funded retirement systems named in this Act; and the applicability of this Act is hereby limited to such persons subject to the provisions of this Act and the provisions of the other state retirement laws not in conflict with this Act.

##### Creditable Service

Sec. 2. (a) Effective September 1, 1973, any eligible person who is a member of one of the systems and not retired under any of the provisions of either the Judicial Retirement System of Texas, Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), or the Teacher Retirement System of Texas, Chapter 470, Acts of the 45th Legislature, Regular Session, 1937, as amended (Chapter 3, Texas Education Code, Vernon's Texas Civil Statutes),<sup>1</sup> or the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes),

may: (1) continue membership; (2) become a member of the other systems for the purpose of establishing or re-establishing creditable service in such other systems, provided that the total creditable service among such systems shall equal or exceed the minimum amount of creditable service required for a service retirement at age 60 in any class of membership in which he has performed service creditable in any of the systems. Service may not be claimed for the purposes of this Act unless such service has first been classified as creditable service in the system in which such service is to be established.

(b) Creditable service may not be granted for the purposes of this Act by any of the systems herein named if such service is credited by any other retirement system established under or governed by the laws of this state; provided further that credit for any service granted hereunder shall not thereafter be credited by any other retirement system or program established under or governed by the laws of this state.

<sup>1</sup> Education Code, § 3.01 et seq.

#### Membership Contributions

Sec. 3. (a) Credit for the purposes of this Act shall be established only upon proper certification by the authority having custody of the payrolls covering such service and upon payment of all contributions, interest, and membership fees due for eligible service approved by the system granting credit for such service. Any payment required shall be paid in a lump sum.

(b) If the service to be established has not heretofore been established the person claiming such service shall pay contributions equal to six percent of the applicable compensation rate of each month of such service; provided, however, the minimum contribution shall not be less than \$18 per month. Persons claiming such service shall pay interest on the contributions due at the rate of 10 percent per year dating from the date the service to be established was performed plus membership fees.

(c) If the service to be established is previous service canceled by a refund of contributions, the system in which service was canceled shall require the payment of all contributions previously refunded plus applicable interest and membership fees.

(d) Interest payments required by this Act shall be calculated on the basis of the state fiscal year.

(e) Membership fees shall be due and payable for each fiscal year in accordance with the laws governing the system granting credit for such service.

(f) A person who is a member, as an elective state official, and as such has creditable service of eight or more years in one of the employee retirement systems authorized by the Constitution and statutes of the State of Texas is eligible to claim retirement service credit for prior service he had as a federal employee. In

order to obtain credit for prior federal service, a person shall obtain such proof of prior federal service as is satisfactory to the Texas retirement system concerned and shall pay both the employee's share and employer's share of contributions, interest, and any membership fee for the years and months for which credit is sought. The contributions for prior federal service shall be computed and paid into the applicable Texas retirement system based on the contributions paid into the retirement system by the State of Texas and by the individual at the beginning of the person's service to the State of Texas as an elected state official. On proof of prior service and payment of contributions, interest, and membership fee as provided by this section, the person shall be granted retirement service credit for the prior federal service. No person may receive credit under this section, however, for more than six years of prior federal service. In computing the amount of prior federal service creditable, a person shall receive one year of retirement credit for each full year and one year of retirement credit for each 6 months or longer, but less than 12 months, that he worked as a federal employee. Credit for prior service as a federal employee may not be claimed under this section by any person who is, at the time of making claim for such service credit, receiving or eligible to receive, federal civil service retirement benefits, or retirement benefits based upon 20 years of full-time active federal military service, or the equivalent thereof.

(g) Any member while serving as a member of the legislature or in any statewide elective office shall, upon verification of service and payment of contributions, interest and fees as provided in this Act, be granted creditable service for previous employment as an assistant county attorney or as an assistant criminal district attorney in a county in which there was no district attorney at the time such service was performed. Contributions required of members claiming such service shall be based upon state salaries paid to district attorneys during the period of time for which such service is claimed, provided, however, the minimum contribution shall not be less than \$24 per month. Such service credit for previous employment as an assistant county attorney or as an assistant criminal district attorney shall be included in determining all death benefits and eligibility for selection of an optional death benefit plan and in calculating occupational disability retirement benefits. Such service credit for previous employment as an assistant county attorney or as an assistant criminal district attorney shall be included in calculating service retirement and non-occupational disability retirement benefits only if the member at the time of his retirement has 12 or more years creditable service as an elective state official exclusive of military service credit and service credit for previous employment as an assistant county attorney or as an assistant criminal district attorney.

**State Contributions**

Sec. 4. (a) The system in which such service is established shall receive from the general revenue fund of the state contributions in the amount required by the laws governing that system for all such service on which state contributions have not heretofore been paid.

(b) State contributions shall be paid in accordance with the prescribed procedure governing the system in which such service is established.

**Membership Benefits**

Sec. 5. (a) After establishing membership and creditable service, as provided herein, the member shall upon attaining age 60, or as otherwise provided by law, be entitled to proportionate service retirement benefits computed on the basis of his length of creditable service in each class of membership in any of the systems in which such service has been granted.

(b) Any eligible member may receive a service retirement annuity at age 60, or as otherwise provided by law, provided the total creditable service is equal to or exceeds the minimum amount of creditable service required for a service retirement in any class of membership in any of the systems for which he has been granted creditable service, and further provided that any service retirement annuity selection made under the provisions of this Act shall be the same in all systems. Each system shall be responsible only for the payment of that portion of the service retirement annuity which is computed for each class of service at the relative value of such service in the system in which it has been credited. Nothing herein shall authorize the combining of all such creditable service into one of the systems.

**Administration**

Sec. 6. (a) It is specifically declared to be the intention of the legislature that the three systems, as specified herein, shall cooperate fully, each with the others, so that funds of any of the systems not be used for the payment of benefits for services credited in any of the other systems.

(b) The provisions of this Act shall be mandatory on each board of trustees and the administrative officers of each system. The respective boards of trustees shall adopt all necessary rules and regulations required for the administration of this Act, and shall at all times maintain and protect the funds of the separate systems.

**Effective Date**

Sec. 7. This Act shall become effective September 1, 1973.

**Severability Clause**

Sec. 8. If any section, subsection, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed with-

out such section, subsection or clause so declared unconstitutional.

**Combining Credits Not Prohibited; Repealer**

Sec. 9. The provisions of this Act shall not prohibit any person with creditable service in more than one of the retirement systems named in this Act from combining such credit into one of the retirement systems under the provisions of Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended by Chapter 230, Acts of the 56th Legislature, Regular Session, 1959 (Article 6228a-2, Vernon's Texas Civil Statutes). With such exception all provisions of the law otherwise inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

[Acts 1973, 63rd Leg., p. 1587, ch. 573, eff. Sept. 1, 1973.]

**2. CITY PENSIONS****Art. 6229. Board of Trustees**

In all incorporated cities and towns having a population of two hundred eighty thousand or more according to the preceding Federal census the mayor, two aldermen or commissioners, and two citizens of said city or town to be designated by the mayor and his successors, shall constitute a Board of Trustees of the Municipal Employees' Pension Fund to provide for the disbursement of the same and to designate the beneficiaries thereof. The board shall be known as the Board of Municipal Employees' Pension Fund, Trustees of \_\_\_\_\_, Texas. The board shall hold its office until the next general election in such city for municipal officers. Said board shall organize by choosing one member as chairman and by appointing a secretary. Such board shall have charge of and administer such fund and shall order payments therefrom in pursuance of the provision of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of the beneficiaries of said fund and the amounts paid them.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

**Art. 6230. Membership In**

Each fully paid municipal employee in the employment of such city or town, who desires himself or his beneficiaries to participate in said fund, shall file a written statement with the city clerk of his desire to participate in said fund, and authorize said city or town to deduct one per cent. of his wages each month to form a part of the fund known as the Municipal Employees' Pension Fund.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

**Art. 6231. Payments to Fund**

There shall be adopted<sup>1</sup> for such fund from the wages of each municipal employee one per cent of the wages earned by such employees

when they have filed application therefor. Any donations made to such fund and rewards received by any municipal employee, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

<sup>1</sup> So in enrolled bill. R.S.1925 read "deducted."

#### Art. 6232. Conduct of Meetings

The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Municipal Employees' Pension Fund Board of \_\_\_\_\_, Texas, and the said board shall direct payment of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6233. Custody of Funds

The Treasurer of said city or town shall be Ex-officio Treasurer of such fund. All money for said fund shall be paid over to and received by the Treasurer for the use of said fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6234. Who May Share in Fund

Any person who at the establishment of said fund, or thereafter shall have been duly appointed and enrolled as a municipal employee of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application within thirty days after the organization of such board, or who shall file his application within thirty days after becoming a municipal employee and who shall have allowed said deductions from his salary, as well as the benefi-

ciaries hereinafter named, shall be entitled to participate in said fund.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 18, ch. 18; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6235. Retirement Pensions

Whenever any municipal employee who shall have contributed a portion of his salary, as provided herein, shall have served twenty years or more as a municipal employee, he may be entitled to be retired from said service upon application, and shall, if the board approves, be entitled to be paid from such funds a monthly pension of one-half of the salary received by him at the time of his retirement.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6235a-1. Retirement Pensions in Cities of 53,000 to 57,000

##### Municipal Retirement Board; Appropriations

Sec. 1. (a) The governing body of any incorporated city in this State having a population not less than 53,000 and not more than 57,000, according to the last preceding Federal Census, such cities being located in counties having a population not less than 77,600 and not more than 77,850, according to the last preceding Federal Census, in addition to other powers by it possessed, may by ordinance create a Municipal Retirement Board, as defined in this Act, to administer and supervise the receipts and disbursements of the employees' retirement fund authorized by this Act, and by such ordinance adopt a plan to pay retirement allowances to retire employees of such city as hereinafter specified.

(b) If any such ordinance shall provide for contributions to such retirement system by appropriation from the general funds of such city, and if such contributions shall constitute a debt incurred in any fiscal year to be paid after the end of such fiscal year, then in such events the question as to whether the governing body of said city should be empowered to appropriate from the public revenues each year for the purpose of augmenting the retirement fund shall be submitted to a vote of the qualified voters who are taxpayers in such city.

##### Title of Act

Sec. 2. This Act may be referred to as the Municipal Retirement Law.

##### Definitions

Sec. 3. The following words and phrases as used in this Act, unless a different meaning is required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the employees' retirement system of the city in which such system provided for herein is established.

(2) "Board" shall mean the "Municipal Retirement Board" provided for in this Act to administer the retirement system.

(3) (a) "City" shall mean the city in which the retirement system as herein provided is established.

(b) "City Agency" shall mean any board, commission, division, department, office or agency of the city government, by which an employee of the city is paid.

(4) "Employee" shall mean any person employed by the city or city agency as hereinbefore defined in regular service at a wage or salary payable at stated intervals, but shall not include any person in the city service elected by the vote of the people. In the event of a question arising as to the right of any person in the service of the city to be classified as an employee under this Act, the decision of the Board shall be final.

(5) "Member" shall mean any person included in the membership of the retirement system as provided in this Act.

(6) "Annuity" shall mean the annual payments for life derived from contributions made by a member. All annuities shall be paid in equal monthly instalments.

(7) "Pension" shall mean the annual payments for life derived from contributions made by the city. All pensions shall be paid in equal monthly instalments.

(8) "Retirement allowance" shall mean the annuity plus the pension, or any optional benefit payable in lieu thereof.

(9) "Earnable compensation" shall mean the full rate of compensation that would be payable to a member if he worked the full normal working time for his position. In cases where compensation includes maintenance, the Board may in its discretion fix the value of that part of the compensation not payable in money, and in the event that such Board does not exercise its discretion "earnable compensation" shall mean the full rate of compensation payable in money.

(10) "Final average salary" shall mean the average annual earnable compensation of a member during his last five years of creditable service immediately preceding his date of retirement, or if he should have less than five years of creditable service, then his average annual earnable compensation during his creditable service.

(11) "Service" shall mean service as an employee and paid for by the city or city agency.

(12) "Prior service" shall mean the service of a member as an employee rendered prior to the date of the establishment of the retirement system, either in the service of the city or city agency, certified on a prior service certificate and allowable as provided in this Act.

(13) "Membership service" shall mean service as an employee since last becoming a member of the retirement system and on

account of which contributions are made by the city.

(14) "Creditable service" shall mean prior service plus membership service for which credit is allowable under Section 4 of this Act.

(15) "Accumulated contributions" shall mean the sum of the contributions, together with regular interest, of a member deducted from his salary and held for his credit in the annuity savings fund provided in this Act.

(16) "Regular interest" shall mean interest at such rate as may be set from time to time by the Board in accordance with this Act.

(17) "Medical council" shall mean the council of physicians provided for in this Act.

(18) "Actuarial equivalent" shall mean a benefit of equivalent value when computed with regular interest on the basis of the mortality tables adopted by the Board.

(19) "Beneficiary" shall mean any person in receipt of a retirement allowance, or other benefit, as provided by this Act.

(20) The masculine shall include the feminine.

#### Members, Qualifications, Rights and Duties

Sec. 4. (a) Any person who is an employee of such city on the date this Act becomes effective shall be, except as hereinafter provided, eligible for membership and shall become a member as of the date the governing body finally passes the ordinance herein authorized, unless, within a period of thirty days after the passage of such ordinance, said employee files with the Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which would otherwise inure to him by participation in the system.

(b) Any person who becomes an employee of such city, after the date of establishment of the retirement system by the final passage of said ordinance, shall become a member as a condition of his employment.

(c) Any employee of said city, whose membership in the retirement system is contingent on his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Board may require. If such employee becomes a member within six months after the effective date of establishment of the retirement system in such city, said employee shall be eligible for prior service credit, but if he does not become a member within such period he shall not be eligible for prior service credit.

(d) Employees of such city who may not become members under this Act shall include (1) the Mayor and members of the governing body of said city, (2) all quasi-legislative, quasi-judicial, and advisory boards and commissions,

(3) the Judge or Recorder of the Corporation Court, the Clerk of said Court, and any Deputy Clerk of said Court, (4) all parttime employees, (5) all seasonal and temporary employees and (6) all employees whose compensation is only partly paid by said city.

(e) Should any member in a period of ten consecutive years after last becoming a member be absent from service of said city more than five years, or should he withdraw more than fifty (50%) per cent of his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

(f) When an employee leaves the service of the city for any reason, he shall be refunded, upon application in writing to the Board on a form provided by the Board, all his accumulated contributions plus interest on same from time of each payment at a rate not to exceed two (2%) per cent per annum.

#### Contributions to System; Actuarial Basis

Sec. 5. Contributions to the retirement system authorized by this Act shall be made by the members and by the city establishing the system approximately on a 50-50 basis. Such retirement system when established shall be founded and operated on an actuarial basis; that is, on the basis of tables prepared by actuaries of the mortality and withdrawals from the service of such city and the cost of benefits. Individual accounts shall be maintained with each member of the retirement system showing the amount of the member's contributions and the regular interest accumulations thereon, and annually a statement shall be given each member showing the total accumulation to his credit. Said city, upon establishing a retirement system, shall pay annually to the Board, on account of each member, a certain percentage of the employee's compensation, and the rates percent of such contributions shall be fixed on the basis of the liabilities of the retirement system as determined by actuarial valuations. The amounts required to meet these contributions by the city shall be paid to the Retirement Board annually by appropriation from the General Fund of said city. All of the expenses involved in the administration and operation of the retirement system shall be paid from appropriation from the General Fund of said city.

#### Retirement Board

Sec. 6. (a) The Municipal Retirement Board shall be composed of seven members consisting of the Mayor, one City Councilman, the City Manager, the City Treasurer, or their successors, and three legally qualified voters of the city, residents thereof for the preceding five years, to be chosen by the employees of the city who are contributors to the retirement fund authorized by this Act to be created. Said employees are hereby authorized to form an association for that purpose and the first member so chosen shall be elected for a term of one year. The second person so chosen shall

be elected for a term of two years and the third person so chosen shall be elected for a term of three years, after the expiration of which times the respective successors in office shall be elected to serve for a term of three years, and each shall continue to serve until his successor is duly elected. Vacancies occurring by death, resignation or removal of such representatives shall be filled by members chosen by the employees.

(b) The Board shall have charge of and administer the retirement fund and shall order payments therefrom in pursuance of the provisions of this law and of the ordinance adopted by said governing body of said city. The Board shall report annually to the governing body of such city the condition of said fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund and the amounts paid them.

(c) Each member of the Board shall, within ten days after his appointment and election, take an oath of office that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system.

(d) Subject to the limitations of this Act, the Board shall from time to time establish rules and regulations for the administration of the fund authorized to be created by this Act and for the transaction of the Board's business. The Board shall elect from its membership a chairman and shall by a majority vote of all its members appoint a secretary who may be, but need not be, one of its members. The Board shall engage such actuarial and other service as may be required to transact the business of the retirement system.

(e) The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board shall approve, subject to any limitations fixed in the ordinance passed by the governing body of the city creating the Board and establishing the fund herein authorized.

(f) The Board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

(g) The Board shall keep a record of all its proceedings which shall be open to public inspection. Said Board shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of said system, and the last balance sheet showing the financial condition of said system as disclosed by an actuarial valuation of the assets and liabilities of the retirement system.

(h) The Board shall designate a medical council to be composed of three physicians.

Other physicians may be employed to report on special cases if required. The medical council shall arrange for and pass on medical examinations required by the retirement system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board its conclusions and recommendations upon all matters referred to it.

(i) The City Attorneys shall be the legal advisor of the Board.

(j) The Board shall designate an actuary who shall be the technical advisor of the Board on matters regarding the operation of the funds authorized by the provisions of this Act and shall perform such other duties as are required in connection therewith. As of the date of the establishment of the retirement system, the actuary shall make such investigation of the mortality, service and compensation expenses of the members of the system, and the Board shall authorize, and, on the basis of such investigation, the actuary shall recommend for adoption by the Board, such tables and such rates as are hereinafter required.

(k) The Board shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the fund authorized by this Act to be created.

(l) At least once within three years after the retirement system authorized by this Act shall become effective in any such city, and at least once during each five year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of said retirement system, and shall make a valuation of the assets and liabilities of the funds of the system. Taking into account the results of such investigation and valuation, the Board shall

(1) adopt for the retirement system such mortality, service and other tables as shall be deemed necessary;

(2) certify the rates of contribution payable by members under the provisions of this Act, and

(3) certify the rates of contribution payable by the city on account of new entrants.

On the basis of such tables as the Board shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system.

(m) The City Treasurer shall be the custodian of the funds of the retirement system and shall give such bonds for the proper performance of his duties as may be required by the governing body in its ordinance adopted pursuant to this Act. All payments from said funds shall be made by the Treasurer only upon vouchers signed by two persons designated by the Board. A duly attested copy of a resolution of the Board designating such persons and

bearing on its face specimen signatures of such persons, shall be filed with the Treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the Board.

(n) Except as herein provided, no member of the Board and no employee of the Board shall have any interest directly or indirectly in the gains or profits of any investment made by the Board, nor as a member of the Board directly or indirectly receive any pay or emolument for his services. No member of the Board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the Board; nor shall any member or employee of the Board become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the Board.

(o) The Board shall be the trustee of the funds of the retirement system and shall have full power in its sole discretion to invest and reinvest, alter and change these funds, and the Board shall not be held liable for the exercise of more than ordinary care and prudence in the selection of such investments, but all funds of the system shall be invested subject to all of the conditions, limitations and restrictions imposed by law upon life insurance companies in the State of Texas in the making and disposing of these investments.

(p) None of the funds or moneys mentioned in this Act shall be assignable either in law or equity or be subject to issue, levy, attachment, garnishment or other legal process.

#### Benefits

Sec. 7. (a) Any member in active service who has attained the age of sixty-five (65) shall be retired upon filing with the Board a request for retirement, on a form provided by the Board for that purpose, stating a date not less than thirty (30) nor more than ninety (90) days subsequent to the filing thereof when the retirement is to be effective. Any member in active service who has attained the age of seventy (70) on the date of establishment of the retirement system or who thereafter attains the age of seventy (70) shall be retired forthwith, unless he shall be permitted to continue in service upon approval of the City Manager and the medical council, and in case of such continuation after age seventy (70) the City Manager or the medical council may require the employee to retire at any time thereafter.

(b) The service retirement allowance shall consist of

(1) an annuity which is the actuarial equivalent of the member's accumulated contributions; provided

(2) employees in service at the time the retirement system becomes effective who are fifty-one (51) years of age or older and have been in the service not less than

twenty (20) years shall be retired on one-half salary, on proper application at age sixty-five (65), as provided above, or if such employee has served less than twenty (20) years, then retirement allowance shall be such percentage of twenty (20) years served times one-half the salary of such employee; provided, the maximum allowance shall in no event exceed One Hundred (\$100.00) Dollars per month; and

(3) employees in service at the time the retirement system becomes effective who are less than fifty-one (51) years of age shall be retired at age sixty-five (65) on proper application, as provided hereinabove, on an allowance based on the reserve accumulated by said employee and by the city's contributions to said fund; and provided

(4) no employee, even though continued in service after age sixty-five (65), shall pay contributions if such employee has contributed for twenty (20) years, but if said employee has not contributed for twenty (20) years and does not elect to be retired, such employee may continue contributions to increase his accumulated reserve, not to exceed the equivalent of twenty (20) years, until such time as compulsory retirement shall become effective, as hereinabove provided.

(c) Upon the receipt of proper proofs of the death of a member in active service, his accumulated contributions, with accrued interest, shall be paid to such person, if any, as he has nominated in written designation duly executed and filed with the Board; otherwise, such payment shall be to his executors or administrators.

#### Financing the Retirement System

Sec. 8. The employees' retirement fund authorized by this Act shall be a fund in which shall be accumulated contributions from the compensation of members and from contributions of the city, to provide for retirement allowances of employees. Upon the basis of such tables as the Board shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation, which, when deducted from each payment of his prospective earnable compensation prior to his attainment of age sixty-five (65) and accumulated at regular interest until his attainment of such age, shall be computed at that time an annuity equal to the retirement allowance to which he will be entitled at that age on account of his service as a member.

Provided, that all employees of such city in service at the time the retirement system becomes effective shall be divided, for purposes of finances and retirement allowances, into two groups, to wit: (1) all employees who have attained the age of fifty-one (51) years who shall be retired under the system at the proper time by direct appropriation from the General

Fund of said city on one-half salary if said employee has been in service twenty (20) years or more, or on such percentage of twenty (20) years served times one-half his salary if he has served less than twenty (20) years, and in no event shall such retirement allowances exceed One Hundred (\$100.00) Dollars per month, and (2) all employees who have not attained the age of fifty-one (51) years, who shall be retired strictly on an actuarial reserve plan as authorized under this Act. Provided, that said Board may provide for the benefits herein provided for by contracting for and taking out from time to time an insurance policy, or policies, and, if necessary, renewals or substitutions of the same should said Board deem it advisable.

#### Liquidation of System, Provision for

Sec. 9. Every such ordinance passed by the governing body of the city shall provide a method by which said retirement system may be liquidated in the event said system shall become insolvent.

#### Act Cumulative

Sec. 10. This Act shall not expunge, abrogate, rescind or invalidate any ordinance, law or act of the people of any such city heretofore passed, but all such ordinances, laws and acts of the people shall be cumulative and, after the passage of this Act, shall be in full force and effect.

[Acts 1939, 46th Leg., p. 114.]

#### Art. 6236. Disability Pensions

Whenever any municipal employee of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a municipal employee at the time he became so disabled, to be paid in regular monthly installments.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6237. Death Benefits, Widow, etc.

In case of the death before or after retirement of any municipal employee of any city or town, resulting from disease contracted, or injury received while in the line of duty, or from any other cause through no fault of his own, and who at the time of his death or retirement was a contributor to said fund, leaving a widow or child or children under sixteen years of age, the widow shall be entitled to receive from said fund an amount not exceeding one-fourth of the monthly wages received by such member immediately preceding his death, and the chil-

dren of said deceased under sixteen years of age shall receive in the aggregate one-fourth of such monthly wages to be equally divided between them. When any child shall reach sixteen years of age, then such child shall no longer participate in the division of such wages of said deceased, but the same shall be paid to his remaining children, if any, under sixteen years of age, in equal parts, until they respectively become sixteen years of age. In no case shall the amount paid to any one family exceed the amount of one-half of the wages earned by the deceased immediately prior to the time of his death. Upon the re-marriage of any widow or the marriage of any child granted such pension, such pension shall cease. No widow or child of any such member resulting from any marriage contract subsequent to the date of retirement of said member shall be entitled to a pension under this law.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6238. Death Benefits, Father, etc.

If any municipal employee dies from injuries received or disease contracted while in line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother or sister, wholly dependent upon said person for support, such dependent father, mother, brother and sister shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, and as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to said matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6239. Investigations

The board shall consider all cases for the retirement and pension of municipal employees rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a municipal employee and who is a contributor to said fund may appear either in person or by attorney and contest the applica-

tion for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any municipal employee and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding. [Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6240. Medical Examination

Said board may cause any person receiving any pension under this law, who has served less than twenty years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6241. Who are Members

All municipal employees and superintendents in the employ of any such city or town, who have filed their application for participation in said fund, and have contributed a portion of their salary, are hereby declared municipal employees of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6242. Use of Public Funds

No funds shall be paid out of the public treasury of such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6243. Awards Exempt

No amount awarded to any person under the provisions of this law shall be liable for the debts of any person; shall not be assignable and shall be exempt from garnishment or other legal process.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 206, ch. 94.]

#### Art. 6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments

Board of Trustees

Sec. 1. In all incorporated cities and towns which operate a separate Firemen, Policemen

and Fire Alarm Operators Pension System containing four hundred thirty-two thousand (432,000) or more inhabitants, according to the last preceding Federal Census, having a fully or partially paid Fire and Police Department, there shall be and there is hereby created a Board to consist of seven (7) members, as follows: the Mayor; two (2) Aldermen, Councilmen or Commissioners, each to serve on this Board for the term of office to which they were elected; and two (2) active firemen who shall be selected by the majority vote of the members of the Fire Department, which two (2) members shall be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; and two (2) active policemen to be selected by the majority vote of the members of the Police Department, which two (2) members are also to be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; all said members from the Fire and Police Department shall be elected by the contributors to the fund, as herein provided, and shall serve until their successors are elected and qualified, and their successors shall be appointed to serve for a term of four (4) years. The said appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen and Fire Alarm Operators Pension Fund Trustees of \_\_\_\_\_, Texas. A Board, as herein provided, shall be selected upon the enactment of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman, and by appointing a Secretary, which Board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such town or city, the condition of the said fund, and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any section or subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

#### Investment Counselor; Qualifications

Sec. 1A. (a) The Board of Trustees may employ an investment counselor to advise the Board in the investment and re-investment of money in the Firemen, Policemen, and Fire

Alarm Operators' Pension Fund. The following will be eligible for employment as an investment counselor:

1. Any organization whose regular business functions include rendering investment advisory service to pension and retirement funds and which is registered as a "dealer" under the provisions of Chapter 269, Acts of the 55th Legislature, as amended;

2. Any bank maintaining a Trust Department and offering investment services to pension and retirement funds.

(b) The investment counselor shall receive such compensation as may be determined by the Board. The compensation of the investment counselor may be paid in whole or in part by the City, and if not paid by the City, the cost of the counseling service shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

#### Base Pay Defined

Sec. 1B. As used in this Article on and after October 1, 1971, the term "base pay," when used in reference to the plans of said pension fund existing prior to October 1, 1971, shall mean the maximum pay per month of a patrolman or private, exclusive of educational incentive pay.

#### Membership

Sec. 2. Each fully paid Fireman, Policeman and Fire Alarm Operator, in the employ of such city or town, who desires himself or his beneficiaries to participate in said Fund, shall file a written statement with the City Clerk, or Secretary, of his desire to participate in said Fund, and authorize said city or town to deduct not less than one (1%) per cent, nor more than the percentage determined under Section 3 of this Act, of his wages each month to form a part of the Fund known as The Firemen, Policemen and Fire Alarm Operators' Fund.

#### Deductions; Amount; Early Retirement; Donations

Sec. 3. On and after October 1, 1971, there shall be deducted for such fund, from the wages of each fireman, policeman and fire alarm operator in the employment of the said city or town, when he has filed application therefor, six and one-half percent (6.5%) of the wages earned by such employee, except that if approved by a majority vote of the participating members of the fund at an election held for the purpose, there shall be deducted an amount not to exceed nine percent (9%) of the wages earned by such employee, the amount and the date deductions shall begin to be as set in the election so held. Every contributor to said fund shall be required to pay into the fund on the base pay per month as defined in Section 1B hereof, and no more, except where otherwise provided by any amended plan that may be adopted under Section 11B hereof. Any amended plan adopted under said Section 11B by an election held for such purpose, which authorizes a member who meets all

the requirements for retirement set forth in Section 7 hereof, except that he has not attained the age of fifty (50) years, to choose to be retired at an earlier age fixed in such amended plan, may provide for the deduction of an amount not to exceed ten and seventy-five one-hundredths percent (10.75%) from such employee's wages, as defined in such amended plan, notwithstanding the percentage limitations hereinabove set forth. Any donations made to said fund and rewards received by any members of either of the departments and all funds received from any source for such fund, shall be deposited in like manner to such fund.

#### Conduct of Meetings

Sec. 4. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman. It shall issue orders, signed by the Chairman and Secretary, to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by said Board which order shall state for what purposes such payment is to be made. It shall keep a record of the proceedings, which record shall be of public record; it shall at each monthly meeting send to the City Treasury a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as The Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board, of \_\_\_\_\_, Texas, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "no" and "yes" vote entered upon the proceedings of the Board.

#### Custody of Fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor.

#### Persons Eligible to Participate; Members in Armed Services

Sec. 6. Any person who, at the establishment of said Fund, or thereafter, shall have been duly appointed and enrolled in the Fire Department, Police Department, or Fire Alarm Operators Department of any such city or town within the provisions of this Act, and who has signed an application for participation in said Fund, and has allowed deductions from his salary under any former law and still is in good

standing, and who has filed written application within thirty (30) days after the organization of such Board, or who shall file his application within sixty (60) days after becoming a regular member of such Departments, and after he shall have served the usual probationary period, if any, and who shall have allowed such deductions from his salary; and in addition to the membership provided herein, any person heretofore duly appointed or enrolled in the Fire Department, Police Department, or Fire Alarm Operators Department of any such city or town who is not now a member of the Pension Fund, may file his application with the Board within sixty (60) days after this Act becomes effective and apply for participation therein; provided, however, that said applicant shall pass a physical examination of the same character that is required for original admission into the respective Department in which he serves, and provided that he shall pay into such fund a sum of money equal to the amount of salary deductions he would have paid had he joined immediately upon becoming eligible to participate in the benefits of said fund, as well as the beneficiaries hereinafter named shall be entitled to participate in said fund.

When any incorporated city containing the number of inhabitants stated in Section 1 of Chapter 173, page 292, Acts of the Regular Session of the 52nd Legislature,<sup>1</sup> is consolidated under one government with any other municipality which has maintained a fully paid Fire and Police Department, all permanent policemen and firemen duly appointed or enrolled in the Fire Department or Police Department of the city or town surrendering its corporate existence and who are thereafter duly and lawfully appointed, enrolled or transferred to the respective departments of the city retaining its corporate existence, shall be entitled to membership in the Fund, and the benefits thereof, upon compliance with the requirements of this Act which provides the exclusive procedure for obtaining and maturing any rights and benefits under Chapter 33, Acts of 1941,<sup>2</sup> including all amendments thereto. Written application for participation must be filed with the Board within sixty (60) days after becoming a member of either of such Departments of said city, and in addition shall pass a physical examination of the same character that is required for original admission into the respective departments in which he subsequently serves, and provided he shall pay into such fund within a year the sum of money equal to the salary deduction he would have paid had he been eligible to membership upon becoming a policeman or fireman in any other city or town, and shall also allow the deductions from his current salary as therein provided. The benefits of this Fund accruing to such policemen or firemen shall be all of the benefits accruing to other policemen or firemen generally under the provisions of the original Act of which this is an amendment, and accruing to his years of service, the time he was legally and regularly employed as a policeman or fireman in such other

city or town. No policeman or fireman coming under the applicable provisions of this Section shall be entitled to the full benefits of this Act until all of the money herein required to be paid has been in fact paid to the custodian of the Fund. The custodian of the Fund shall certify to the governing body of the city the fact of compliance with this section, and the said governing body shall appropriate to said Pension Fund from any available funds a sum of money equal to the contributions it would have made had such policeman or fireman been originally employed by the consolidated city retaining its corporate existence. The provisions of this Act shall never be construed as permitting a policeman or fireman to be a member of more than one Pension Fund or to again become a contributing member of the Pension Fund where he is now, either for himself or his heirs receiving any payments from said Fund by reason of any service with the City Police and Fire Departments of the city retaining its corporate existence.

Any member of the Firemen, Policemen and Fire Alarm Operators Pension Fund at the time of the commencement of the Korean conflict; or who may hereafter become a member of said Pension Fund during said conflict or other national emergency connected therewith, who has entered the armed services of the United States or who may hereafter enter the armed services of the United States in any of its branches, voluntarily or involuntarily, or who may be called into the armed services as a member of the Organized Reserve Corps or Texas National Guard upon being released or discharged from said armed service of the United States, and upon his return to duty with the Fire Department, the Police Department, or Fire Alarm Operators Department of any city within the provisions of this Act, may make the payments into said Pension Fund that he would have paid, or would have been required to pay had he remained in said Fire Department, Police Department, or Fire Alarm Operators Department, without interest, within a period of one (1) year from the date of his re-entry into the service of the Department of which he was a former member, and shall be entitled to each and every benefit of said Firemen, Policemen and Fire Alarm Operators Pension Fund and his service shall be computed as being continuous for the purpose of benefits, longevity and retirement, and for all other purposes provided in the Firemen, Policemen and Fire Alarm Operators Pension Act for those members of the Firemen, Policemen and Fire Alarm Operators Pension Fund who remained and continued in that service; provided, however, that payments hereinabove referred to must be made in a lump sum, and until so made the provisions of these rules shall not apply and no person shall be entitled to the benefits hereof until such payment has been made in full. Any member of said Departments, at his option, who has already entered the armed service of the United States, or who may hereafter enter the armed service of the

United States, voluntarily or involuntarily, may make such contributions to the Pension Fund monthly as though he were an active member of said Department, so that upon his return from the armed service he will have kept his payments into said Pension Fund current; provided, however, if any such member who makes such contributions monthly, dies while in the armed service of the United States or becomes disabled so as to prevent him from further rendering service as a Fireman, Policeman or Fire Alarm Operator, then and in that event the contributions made by said member, in the event of death, shall be returned to his legal beneficiaries designated under the Pension Act, and no benefit to a widow or dependent shall accrue; and in the case of disability, the contributions made by the member during the time he was in the armed service of the United States shall be returned to him without interest. In the event any member of the Pension Fund shall die or become disabled through illness or injury while in the armed service of the United States, such member's widow, dependents or beneficiaries named in the Pension Act shall not be entitled to any of the benefits under the Pension Act; nor shall such injured or disabled member be entitled to any disability compensation; provided however, if any member becomes disabled through injuries or illness while in the armed service of the United States, and such member has had twenty years service and membership in the Pension Fund, then his beneficiaries, in case of death, or such member in case of disability injury while in the armed service shall be entitled to the benefits of the Pension Law. All pensions and benefits heretofore granted to such members under any law, or city charter of any city within the provisions of this Act, in force prior to the passage of this Act, such members having served in the armed forces of the United States in conformity with such prior law, or city charter, and having complied with the provisions of such law, or such city charter, are hereby validated.

<sup>1</sup> Section 1 of this article.

<sup>2</sup> This article.

**Certificate of Retirement; Retirement Benefits; Eligibility Requirements; Disability Pension; Rights Upon Leaving Service**

Sec. 7. Where any member of said departments shall have contributed a portion of his salary as provided herein, and shall have served twenty (20) years in either of said departments, he shall be issued a certificate of retirement, which said certificate shall thereafter be incontestable. The issuance of such certificate shall be mandatory upon the board; provided, however, that when said member reaches the age of fifty (50) years he may, after making application, be retired. No person to whom such certificate shall have been issued who has not reached the age of fifty (50) years shall be entitled to receive any retirement benefits until he reaches the age of fifty (50) years, and then upon his application. If

any such member shall voluntarily or involuntarily leave the service of the city after he has received such certificate and before he reaches the age of fifty (50) years, he shall not be entitled to participate in the benefits of this Act until he is fifty (50) years of age; provided, however, that if any such member voluntarily or involuntarily leaves the service of the city and thereafter becomes physically disabled before he reaches the age of fifty (50) years, he shall be entitled to apply for, and the board may grant to him, a disability pension in accordance with this Act, unless such disability was caused by his committing a felony or by an intentional self-inflicted injury, which said pension shall become a retirement pension subject to the provisions of this Act upon his reaching the age of fifty (50) years. In the event such member so retiring, voluntarily or involuntarily, after he has such certificate and before he reaches the age of fifty (50) years, shall die, then his widow or children, or other dependents named in this Act, if any, shall be entitled to share in the benefits of this Act. A member retiring under the provisions of this Act shall receive one-half ( $\frac{1}{2}$ ) of the salary received by him at the time of his retirement; provided, however, that in no instance shall the monthly pension allowance awarded him be in excess of one-half ( $\frac{1}{2}$ ) of the base pay per month, as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under any provision of any state law or any city charter of any city within the provisions of this Act; which pension allowance shall be computed on the basis of the current payroll. This pension allowance, set out above based on the current payroll, shall be granted to the man going on the pension fund as well as the man already on the pension. Any member reaching the age of sixty-five (65) years and having served twenty (20) years in either of the departments, and who has not then retired from such departments, may be summoned before the board for the purpose of determining whether or not he should be retired under the provisions of this Act.

#### Certificate of Retirement

Sec. 8. When any member of the fire department, police department or fire alarm operators' department has been issued a certificate of retirement under the provisions of Section 7 of this Act, he shall be entitled, after having received said certificate, to one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under any provision of any city charter, which pension allowance shall be computed on the basis of the current payroll. The pension allowance set out above, based on the current payroll, shall be granted to the man going on the pension as well as the man already on the pension. The said certificate shall further state that in case of death, or in case where he becomes permanently disabled, he shall be and his benefi-

ciaries shall be entitled to the same awards and rights to participate in the provisions of this Act and any other Act heretofore or hereafter made, as well as any of the provisions of the city charter heretofore or hereafter made, as he would have had before the said board issued his certificate of retirement. The said certificate shall be signed by the mayor, or mayor pro tem, or city manager, if such city has a city manager, and by the chairman of the pension board of firemen, policemen and fire alarm operators, and attested under the seal of the city by the city secretary.

#### Pensions to Disabled or Diseased Members

Sec. 9. When any member of the fire department, police department, and fire alarm operators' department of the city or town within the provisions of this Act, and who is contributing to said fund, as herein provided, shall become so permanently disabled through injury or disease, unless such disability was caused by his committing a felony or by an intentional self-inflicted injury, as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injuries or disease, he shall be retired from the service and be entitled to receive from the said fund one-half ( $\frac{1}{2}$ ) the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any state law or any city charter of any city within the provisions of this Act; which base pay per month as defined in Section 1B hereof, shall be computed on the basis of the current payroll. The pension allowance shall be granted to the man going on a pension as well as to the man already on the pension at the time he became disabled or diseased, the same to be paid in monthly installments, which monthly installments shall in no instance exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any state law or any city charter of any city within the provisions of this Act. In no case shall a disability claim be acknowledged or award made hereunder until disability has been proven to be continuous and the member wholly incapacitated for a period of not less than ninety (90) days.

#### Death Benefits to Widow and Minor Children of Member

Sec. 10. In case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town within the provisions of this Act, from disease contracted or injury received and who at the time of his death or retirement was a member of either of said departments and a contributor to the said fund, leaving a widow, child or children under seventeen (17) years of age, the widow and such child or children shall be entitled to receive from the said fund an amount not to exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half

( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act; one-half ( $\frac{1}{2}$ ) of the widow's amount in the aggregate shall go to the children under seventeen (17) years of age, and the balance of one-half ( $\frac{1}{2}$ ) for the widow. No child of any such member resulting from any marriage contract subsequent to the date of the retirement of such member, shall be entitled to a pension under this Act. In case there are no children, the widow shall receive one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof plus one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act. The one-fourth ( $\frac{1}{4}$ ) awarded to the children shall be paid by the board to the widow, who shall equally and uniformly distribute the amount among the children. In no instance shall the amount received by the widow, child or children, exceed a pension allowance of one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under any state law or any city charter of any city within the provisions of this Act. Where the board, after a thorough examination and by a majority vote in favor thereof, determines that the child or children are unable to and lack the proper discretion to handle said amount provided herein for them, it shall designate and appoint said child's or children's natural guardian as custodian of said fund. Where there is no parent and natural guardian living, the board shall have the power and authority to designate a suitable person to receive and administer the said fund; which said party shall receive for such child or children under the age of seventeen (17) years, one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof, and one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under any state law or any city charter of any city within the provisions of this Act, per month. The said party designated by the board shall receive his authority and power according to established legal practice. When any child or children, who are beneficiaries under this Act, shall reach the age of seventeen (17) years, then such child or children, if any, shall no longer participate in the division of said wages of said deceased, but the same shall be paid to the remaining child or children, if any, under seventeen (17) years of age. In no case shall the amount paid to any one family exceed the amount of one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act. Upon the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow of any such member resulting from any marriage contract subsequent to the date of the retirement of said

member, shall be entitled to a pension under this Act.

Death Benefits to Dependent Father and Mother  
of Member

Sec. 11. If any member of the fire, police, and fire alarm operators' department of any city within the provisions of this Act dies from injury received or disease contracted, who was a member of either of such departments and a contributor to said fund and entitled to participation in said fund himself, leaves no widow or child but leaves surviving him a dependent father and mother wholly dependent upon said person for support, such dependent father and mother shall be entitled to receive one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act, to be equally divided between said father and mother, so long as they are wholly dependent. Where there is one dependent, either father or mother, the board shall grant the surviving dependent one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof, plus one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under any provisions of any state law or any city charter of any city within the provisions of this Act. The board shall have authority to make a thorough investigation and from investigation determine the facts as to the dependency of the said parties and each of them, as to how long the same exists; and may, at any time, upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper; and the findings of said board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustee shall have been set aside or revoked by a court of competent jurisdiction.

Amendment as to Benefits or Eligibility

Sec. 11A. A. "Participating member" as used herein shall mean a fully paid fireman, policeman or fire alarm operator in the employ of the city or town who has filed a statement required by Section 2 hereof.

B. This section applies to all cities and towns which are now within, or which may hereafter come within the provisions of this Act. The participating members of the Firemen, Policemen and Fire Alarm Operators' Pension System may amend, in any manner whatsoever, either the benefits or the eligibility requirements for such benefits, or both, provided that:

(1) The amendment is first approved by a qualified actuary selected by a majority vote of the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators'

Pension System as being actuarially sound. Such qualified actuary shall:

(a) if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; or

(b) if a firm, partnership or corporation, employs one or more persons who are Fellows of the Society of Actuaries or Fellows of the Conference of Actuaries in Public Practice or Members of the American Academy of Actuaries; and

(2) The amendment is approved by a majority of the Board of Trustees of the Fund; and

(3) A majority of the participating members in the Pension Fund, vote for the amendment by secret ballot; and

(4) The amendment does not deprive a member of any of the benefits that have become fully vested to him under the present Fund unless he shall (a) execute his written consent to participate in the amended plan; and (b) has qualified thereunder.

C. Any amendment made pursuant to this Section shall not in any manner affect any rights or responsibilities under the existing Act or create any new rights or responsibilities except as fully set forth in the adopted amendment.

D. Any amendment as set forth herein shall not be required to be ratified by the Legislature of the State of Texas, but shall become operative when properly recorded in the permanent records of the city.

E. The amendment applies only to active full-time firemen, policemen or fire alarm operators in the employ of the city or town at the time of the amendment and those who qualify under the provisions of this Act hereafter.

F. Prior to any election hereunder, the Board of Trustees shall by a majority vote, issue a notice of the calling of the election which notice shall state the proposition to be voted upon and shall include verbatim the amendment sought to be made, which notice shall be posted at the City Hall and at all Fire Stations and Police Stations and upon the bulletin boards at the places where the policemen and firemen are assembled for duty, at least two weeks prior to the date of the election. The balloting in the election shall be held upon two consecutive days with ballot boxes placed at the places that may be determined by the Board of Trustees, so as to be generally convenient to those voting. The ballot boxes shall be kept locked at all times until canvassed by the Board of Trustees or under their supervision.

G. The minutes of the Board of Trustees, certified by the Secretary thereof, showing:

(1) The proposed amendment to the Pension System; and

(2) The calling of the election and the giving of notice thereof; and

(3) The canvassing of the votes in said election, under the supervision of the Board of Trustees, and a certification of the results thereof by the Board;

when reduced to writing as other permanent records of the city and filed in the office of the City Secretary of the city in which the election is held, shall constitute evidence of the matters contained therein, admissible in all courts and proceedings. If a majority of the votes cast in said election are for the amendment, the filing in the City Secretary's office as herein set out, shall be the effective date thereof, and shall constitute an amendment to the Firemen, Policemen and Fire Alarm Operators' Pension System.

#### Comprehensive Amendment Permitted

Sec. 11B. In addition to the authority of the participating members to amend the Firemen, Policemen and Fire Alarm Operators' Pension System, as set forth in Section 11A hereof, members who, pursuant to Section 2 hereof, file a statement of desire to participate and who authorize therein appropriate deductions from their wages, may also create within said pension system, by comprehensive amendment thereto, a plan embodying changes in addition to those authorized by Section 11A hereof, provided that:

(1) The amendment is first approved by a qualified actuary selected by a majority vote of the board of trustees of the Firemen, Policemen and Fire Alarm Operators' Pension System as being actuarially sound. Such qualified actuary shall:

(a) if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a member of the American Academy of Actuaries; or

(b) if a firm, partnership or corporation, employs one or more persons who are Fellows of the Society of Actuaries or Fellows of the Conference of Actuaries in Public Practice or members of the American Academy of Actuaries; and

(2) The amendment is approved by a majority of the board of trustees of the fund; and

(3) A majority of the participating members in the pension fund, vote for the amendment by secret ballot; and

(4) The amendment does not deprive a member of any of the benefits that have become fully vested to him under the present fund unless he shall (a) execute his written consent to participate in the amended plan; and (b) has qualified thereunder.

B. Any amendment made pursuant to this section shall not in any manner affect any rights or responsibilities under the existing

Act or create any new rights or responsibilities except as fully set forth in the adopted amendment.

C. Any amendment as set forth herein shall not be required to be ratified by the Legislature of the State of Texas, but shall become operative when properly recorded in the permanent records of the city.

D. The amendment applies only to active full-time firemen, policemen or fire alarm operators in the employ of the city or town at the time of the amendment and those who qualify under the provisions of this Act hereafter.

E. Prior to any election hereunder, the board of trustees shall by a majority vote, issue a notice of the calling of the election which notice shall state the proposition to be voted upon and shall include verbatim the amendment sought to be made, which notice shall be posted at the city hall and at all fire stations and police stations and upon the bulletin boards at the places where the policemen and firemen are assembled for duty, at least two weeks prior to the date of the election. The balloting in the election shall be held upon two consecutive days with ballot boxes placed at the places that may be determined by the board of trustees, so as to be generally convenient to those voting. The ballot boxes shall be kept locked at all times until canvassed by the board of trustees or under their supervision.

F. The minutes of the board of trustees, certified by the secretary thereof, showing:

- (1) The proposed amendment to the pension system; and
- (2) The calling of the election and the giving of notice thereof; and
- (3) The canvassing of the votes in said election, under the supervision of the board of trustees, and a certification of the results thereof by the board;

when reduced to writing as other permanent records of the city and filed in the office of the city secretary of the city in which the election is held, shall constitute evidence of the matters contained herein, admissible in all courts and proceedings. If a majority of the votes cast in said election are for the amendment, the filing in the city secretary's office as herein set out, shall be the effective date thereof, and shall constitute an amendment to the Firemen, Policemen and Fire Alarm Operators' Pension System.

G. Contributions by such city to any plan created under this section shall be the same percentage of gross payroll of the members participating therein that is applicable presently or in the future to the original plan and the one created under Section 11A hereof. Compliance with Section 14 hereof with respect to such existing plans shall also be authority for such city to contribute on the same percentage basis to any plan created under this Section.

#### Investigation

Sec. 12. The Board shall consider all cases for retirement and pension of the members of the Fire, Police and Fire Alarm Operators' Departments rendered necessary or expedient under the provisions of this Act; and all applications for pensions by widow, the children, and dependent relatives; and the said Trustees shall give notice to persons asking a pension to appear before said Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor to said Fund may appear either in person, or by attorney, and contest the application for participation in said Fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served by any member of the Police, Fire or Fire Alarm Operators' Department, and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

There shall be appropriated out of the Pension Fund on the majority vote of the members of said Board, Three Hundred (\$300.00) Dollars annually, which money shall be used at the instigation and approval of the Board for the defraying of traveling expenses of investigators used by the Board beyond the boundaries of any incorporated city which operates under this Act.

#### Medical Examination

Sec. 13. Said board may cause any person receiving any pension under the provisions of this Act, who has served less than twenty (20) years, to appear and undergo medical examination by either the health director or some reputable physician selected by the board; as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued. In making the findings the board may change any percentages stipulated in any section or subsection of this Act, by reducing the same to one-twentieth ( $\frac{1}{20}$ ) for each year served not to exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any city charter; if any person receiving relief under the provisions of this Act, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

#### Use of Public Funds

Sec. 14. No funds shall be paid out of the public Treasury of any such incorporated city or town in carrying out any of the provisions

of this Act, except by a majority vote of the voters of said city or town.

#### Investment of Surplus

Sec. 15. Whenever, in the opinion of said Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon said Fund, such surplus, or so much thereof as in the judgment of said Board is deemed proper, shall be put into a Reserve Fund for the sole benefit of said Pension Fund, and may be invested by the Board in bonds or other interest-bearing obligations and securities of the United States, the State of Texas; or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred stocks and common stocks as the Board may deem to be proper investments for such Reserve Fund.

No more than eighty-five percent (85%) of said Reserve Fund shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of the fund be invested in corporate bonds and stocks issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned, such percentages to be determined at the time the investment is made.

Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have shown a profit in four (4) of the last five (5) years immediately prior to the date of purchase; provided that an amount up to five percent (5%) of the Reserve Fund, computed at the date of a purchase, may be invested in stocks, bonds, or debentures of corporations that do not have such an earnings record.

The investments shall remain in the custody of the Treasurer in the same manner as provided for the custody of the Pension Fund. The Board shall have authority to buy and sell any of its authorized investments. As the demands on the Pension Fund require, monies obtained by withdrawal or sale of investments from the Reserve Fund shall be used for the payment of retirement benefits.

The regulations set forth in this Section for the investment of surplus funds shall apply to the original Pension System specifically established in this Act, as well as to any amended plan established pursuant to Section 11A hereof or related provision of law.

#### Awards Exempt

Sec. 16. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be

assignable, and shall be exempt from garnishment or other legal process.

#### Saving Clause

Sec. 17. The laws and parts of laws including city ordinances in conflict herein are hereby repealed to the extent of such conflict only and except as to such conflict shall be in full force and effect, and this Act shall in nowise change, amend or repeal any part of any Fireman's and Policeman's Pension Law other than such law as is provided in House Bill 122, Acts of the First Called Session of the Forty-fourth Legislature.<sup>1</sup>

If any provision, section or subsection of this Act is declared unconstitutional by a Court of competent jurisdiction it shall not invalidate the remaining sections and subsections of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 4, ch. 4; Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, § 1; Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, §§ 1 to 6; Acts 1941, 47th Leg., p. 45, ch. 33, § 1; Acts 1945, 49th Leg., p. 62, ch. 43, § 1; Acts 1947, 50th Leg., p. 211, ch. 120, § 1; Acts 1951, 52nd Leg., p. 292, ch. 173, § 1; Acts 1953, 53rd Leg., p. 3, ch. 3, §§ 2 to 6; Acts 1967, 60th Leg., p. 2026, ch. 749, §§ 1 to 3, eff. June 18, 1967; Acts 1969, 61st Leg., p. 1450, ch. 430, § 1, eff. June 2, 1969; Acts 1971, 62nd Leg., p. 2074, ch. 638, §§ 1 to 9, eff. Oct. 1, 1971; Acts 1971, 62nd Leg., p. 2081, ch. 639, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 808, ch. 363, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, amending this article.

Section 3 of the amendatory Act of 1941, section 2 of the act of 1945, and section 3 of the act of 1947, each read as follows: "Constitutionality: If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act, and the Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional."

Section 2 of the Act of 1947 provided that: "2. It is the purpose of this Act to give such servicemen the same benefits upon the payment of the sums required under this Act that he would have had, had he remained uninterrupted and continuously in the said Fire Department, Police Department or Fire Alarm Operators' Department of such city or town."

Sections 1, 7 to 9 of the amendatory Act of 1953, read as follows:

"Section 1. This Act shall apply to those cities and those cities only which come within and are now within the provisions of Senate Bill No. 128, Acts 1951, 52nd Legislature, Regular Session, Chapter 173, page 292, Section 1, which said Act applies to all cities and towns within this State which operate a separate Firemen's, Policemen's and Fire Alarm Operators' Pension System, and which contain and have four hundred thirty-two thousand (432,000) or more inhabitants according to the last preceding Federal Census and having a fully or partially paid Fire, Police, and Fire Alarm Operators Departments.

"Sec. 7. All pensions and benefits heretofore granted by the said Board of any city within the provisions of this Act resulting from death, disease or injury whether the same was received in the line of duty or not are hereby validated.

"Sec. 8. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

"Sec. 9. If any section, clause, part, phrase, or word of this Act shall be held by the courts to be unconstitutional or invalid, it is declared to be the legislative intent that such invalidity shall not invalidate, impair or affect the remaining portions of this Act, and that such remaining portions of this Act be and the same are enacted regardless of such invalidity of any part of this Act."

Acts 1969, 61st Leg., p. 1450, ch. 430, §§ 2, 3, provided:

"Sec. 2. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the courts to be invalid, such holding shall not affect the remaining portions of this Act, and the Legislature hereby declares that it would have passed such remaining portion despite such invalidity.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

Acts 1971, 62nd Leg., p. 2074, ch. 638, which by sections 1 to 9 added and amended various sections of this article, provided in sections 10 and 11:

"Sec. 10. Any laws and parts of laws, including city ordinances, in conflict with the provisions hereof, are hereby repealed to the extent of such conflict only and, except as to such conflict, shall be in full force and effect, and this Act shall not amend any section or part of Article 6243a, as heretofore amended, except as set forth herein.

"Sec. 11. This Act shall take effect and be enforced from and after October 1, 1971, and it is so enacted."

Acts 1971, 62nd Leg., p. 2081, ch. 639, amending § 15, provided in section 2: "Any laws and parts of laws, including city ordinances, in conflict with the provisions hereof, are hereby repealed to the extent of such conflict only and, except as to such conflict, shall be in full force and effect, and this Act shall not amend any section or part of Article 6243a, as heretofore amended, except as set forth herein."

Section 3 thereof, an emergency clause, provided in part: " \* \* \* pursuant to Acts 1939, 46th Legislature, page 394, Section 2, effective May 23, 1939, the repeal of Article 5006 of the Revised Civil Statutes of Texas regarding the investment of funds of insurance companies, left uncertain the manner in which the Reserve Retirement Fund shall be invested, \* \* \*".

**Art. 6243b. Firemen and Policemen Pension Fund in Cities of 310,000 to 330,000**

**Board of Trustees**

Sec. 1. In all incorporated cities and towns containing more than three hundred ten thousand (310,000) inhabitants and less than three hundred thirty thousand (330,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund, Trustees of \_\_\_\_\_, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

**Participation in Fund; Wage Deductions**

Sec. 2. Each fully paid fireman, policeman and fire alarm operator in the employment of such city or town, must participate in said fund, and said city or town shall be authorized to deduct a sum of not less than one per cent

(1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators Pension Fund, except in times of national emergency said persons as are employed during such time shall not be required to participate in said fund. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1, Chapter 101 of the General and Special Laws of the 43rd Legislature, First Called Session, within the minimum and maximum deductions herein provided.

**Payments to Fund**

Sec. 3. There shall be deducted from such fund from the wages of each fireman, policeman and fire alarm operator a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of the wages earned by such employees, the amount of wages so deducted to be determined as provided in Section 2, Chapter 101 of the General and Special Laws of the 43rd Legislature, First Called Session, as amended by this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

**Conduct of Meetings**

Sec. 4. The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the "Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board," of \_\_\_\_\_, Texas, and the said board shall direct payments of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board.

**Custody of Fund**

Sec. 5. The treasurer of said city or town shall be ex-officio treasurer of said fund. All money for said fund shall be paid over to and received by the treasurer for the use of said fund, and the duties thus imposed upon such

treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor.

#### Membership in Pension Fund; Eligibility

Sec. 6. (a) Any person who has been duly appointed and enrolled as a policeman, fireman, or fire alarm operator of any city covered by this Act, and who, after such due appointment and enrollment has served the probationary period of such position or office, if any, shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman, policeman, or fire alarm operator of such city, and who, after due appointment and enrollment serves the probationary period in such position or office, if any, shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age.

#### Retirement Pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his salary, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he shall be entitled to be retired from said service upon application, and shall be entitled to be paid from said fund a monthly pension of one-half ( $\frac{1}{2}$ ) of the salary received by him at the time of his retirement.

#### Disability Pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments.

#### Death Benefits, Widows, Etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly wages received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly wage received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly wage received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly wage received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly wage earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly wage received

by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly wage received by such member paid to the widow and one-fourth of said monthly wage paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature.

**Death Benefits, Father, Etc.**

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly

dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked.

**Modification of Benefits, Eligibility Requirements and Contributions; Conditions**

Sec. 10A. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators Pension Fund may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications to operate prospectively:

(1) modify or change in any manner whatsoever any of the benefits provided by this Act;

(2) modify or change in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(3) increase or decrease the percentage of salaries to be contributed to the fund;

(4) provide for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of actuaries;

(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes shall apply only to active full-time employees who are members

of the departments at the time the change becomes effective and those who enter the departments thereafter;

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

#### Investigations

Sec. 11. The board shall consider all cases for the retirement and pension of the members of the fire, police and fire alarm operators' department rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and the children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police, fire and fire alarm operators' department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

#### Medical Examination

Sec. 12. Said board may cause any person receiving any pension under the provisions of this law, who has served less than twenty (20) years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

#### Members of Firemen, Policemen and Fire Alarm Operators Department

Sec. 13. Repealed by Acts 1973, 63rd Leg., p. 817, ch. 368, § 5, eff. June 12, 1973.

#### Use of Public Funds

Sec. 14. No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town, and where such funds have been voted on as provided by law, said city or town shall contribute such amount.

#### Awards Exempt

Sec. 15. No amount awarded to any person under the provisions of this law shall be liable for the debts of any such person; shall not be assignable and shall be exempt from garnishment or other legal process.

#### Separation of Firemen's, Policemen's, and Fire Alarm Operators' Pension Funds in Cities of 100,000 to 185,000 Population

Sec. 16. In any such city or town having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census, subject to and operating under the Pension Law, applicable to such cities or towns in which the Fire Alarm Operators form a part of and are under the direction of the Fire Department, the governing Body and Board of Trustees may, if it is deemed advisable and a majority of the members of said Fire Department or Police Department vote therefor, authorize and provide for the maintenance and administration of Pension Funds for each Department, said Funds to be the Policemen's Division of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, and the Firemen's Division of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, and to be kept independent of and apart from each other, and said Funds of each Department to consist of contributions by members of said Department, donations thereto and funds received from any source by said Department, as provided in Section 3 and Section 14 of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, and the provisions contained in Sections 1, through 15, of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, shall apply to the management, control, and disposition of each of said Funds, the purpose and effect of said division of said Firemen, Policemen, and Fire Alarm Operators' Pension Fund into a Firemen's Division of said Pension Fund, and a Policemen's Division of said Pension Fund being to maintain the membership of and the payments into each Department separate, and to limit the rights of the members of each Department and their beneficiaries to the Pension Fund of their Department, and after the creation and establishment of a Firemen's Division

of said Pension Fund and a Policemen's Division of said Pension Fund, the rights of Firemen, including Fire Alarm Operators and their beneficiaries, shall be limited to the Firemen's Division of said Pension Fund, and the rights of Policemen and their beneficiaries shall be limited to the Policemen's Division of said Pension Fund. After a separation has been voted and approved, as above provided, the Board of Trustees shall apportion the existing Firemen, Policemen, and Fire Alarm Operators' Pension Fund between the two (2) Funds on the basis of contributions made by the members of the respective Departments and donations or payments to said Departments, and thereafter all payments to members or their beneficiaries of benefits, now accrued or hereafter accruing, shall be made from the Fund of their Department. Where a separation of funds is had, as hereinabove provided, the governing body of any city or town whose voters have authorized the payment of funds from the public treasury into the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, is hereby authorized to pay to the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, for the use of the Pension Fund of each division above provided for, sums not to exceed in total the amount voted by the people to be paid into the single fund.

**Validation of Proceedings for Separation of Pension Funds**

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided.

**Operation of Fund Notwithstanding Census Change**

Sec. 18. Any city which has heretofore established a firemen and policemen fund in accordance with Article 6243B of Vernon's Texas Civil Statutes or as amended, shall continue to operate such fund under the provisions of this Act. It is further provided that the fact that any future Federal Census may result in said city being above or below the population bracket herein specified shall not affect the validity of such fund and such fund shall continue to be operated pursuant hereto.

[Acts 1933, 43rd Leg., 1st C.S., p. 279, ch. 101; Acts 1935, 44th Leg., p. 811, ch. 346, §§ 1 to 4; Acts 1937, 45th Leg., p. 616, ch. 308, § 1; Acts 1937, 45th Leg., p. 1335, ch. 495, §§ 1, 2; Acts 1959, 56th Leg., p. 26, ch. 16, § 1; Acts 1961, 57th Leg., p. 983, ch. 427, § 1; Acts 1963, 58th Leg., p. 367, ch. 136, § 1, eff. May 10, 1963; Acts 1969, 61st Leg., p. 2456, ch. 823, § 1, eff.

Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1418, ch. 395, §§ 1, 2 eff. May 26, 1971; Acts 1973, 63rd Leg., p. 815, ch. 368, §§ 1 to 5, eff. June 12, 1973.]

Sections 3 and 4 of the 1971 amendatory act provided: "Sec. 3. The two additional firemen and the two additional policemen provided for in Section 1 of this Act shall be elected by the members of the firemen's pension fund and the policemen's pension fund, respectively, not later than 30 days after the effective date of this Act. The initial terms of office of the two additional firemen and the two additional policemen shall expire on the date of the expiration of the terms of office of the current members of the board of trustees of the fund elected by the members of the firemen's pension fund and the policemen's pension fund.

"Sec. 4. As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

**Art. 6243c. Validating Elections for Pensions in Cities of Over 10,000**

**Election and Proceedings Validated**

Sec. 1. That where a majority of the resident taxpayers being qualified electors of any city or town in this State having a population in excess of ten thousand (10,000) inhabitants, having voted at an election held in such city or town in favor of the expending of public funds by such city or town in carrying out the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,<sup>1</sup> such election and all acts and proceedings had and done in connection therewith by the governing body of such city or town are hereby legalized, approved and validated and it is hereby declared that no further election shall be necessary for the expenditure of public funds to carry out the provisions of H.B. No. 30<sup>2</sup> and H.B. 31,<sup>3</sup> of the First Called Session of the 43rd Legislature, but any election held under the provisions of Chapter 10, General Acts of the 36th Legislature, Regular Session, shall be and is hereby deemed to be sufficient to carry out the provisions of House Bill 30 and House Bill 31, of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Article 6243a.

<sup>3</sup> Article 6243b.

**Validation of Elections Under Other Acts**

Sec. 2. Any other elections held in conformity with the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,<sup>1</sup> and adopting the provisions of said chapter are hereby legalized, approved and validated. Any funds now on hand and belonging to the Firemen and Policemen Fund shall remain a part of said fund and all warrants and vouchers heretofore issued are hereby legalized, approved and validated.

<sup>1</sup> Articles 6229 to 6243.

**Validation of Pensions Paid**

Sec. 3. All pensions heretofore paid by any city under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,<sup>1</sup> including all pensions paid subsequent to the enactment of Senate Bill 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,<sup>1</sup> making said Act applicable only to certain cities and up to November 1, 1933,

are hereby in all things expressly validated and legalized, and all persons to whom such pensions have been paid shall hereafter be deemed to be proper pensioners under the terms of H.B. No. 30 and H.B. 31,<sup>2</sup> Acts of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Article 6243b.

#### Pension Rolls Validated

Sec. 4. All pensioners added to the pension rolls as pensioners under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,<sup>1</sup> but subsequent to the enactment of Senate Bill No. 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,<sup>1</sup> making said Act applicable only to certain cities, shall hereafter be deemed proper and legal pensioners on the rolls of all cities wherein a pension system has been established under the terms of H.B. No. 30<sup>2</sup> and H.B. 31,<sup>3</sup> Acts of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Article 6243a.

<sup>3</sup> Article 6243b.

#### Election in Certain Cities Unnecessary

Sec. 5. All cities included in the population brackets of H.B. No. 30<sup>1</sup> and H.B. 31,<sup>2</sup> Acts of the First Called Session of the 43rd Legislature, shall hereafter from the effective date of this Act be deemed to have a pension system without the necessity of any election or any action on the part of the City Council, and such City Council or Governing Board shall immediately provide adequate funds for the payment of pensions under the terms of H.B. No. 30 and H.B. 31 and the terms of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 89, ch. 30.]

<sup>1</sup> Article 6243a.

<sup>2</sup> Article 6243b.

#### Art. 6243d. Pensions in Cities of 290,000 or Over

Sec. 1. In all incorporated cities and towns having a population of two hundred and ninety thousand (290,000) or more, according to the preceding Federal Census, the governing body of such city or town is hereby authorized to formulate and devise a pension plan for the benefit of all employees in the employment of such city or town. Before said pension plan as devised and formulated by the governing body of such city or town shall become effective, said entire pension plan shall be submitted in ordinance form by said governing body to the qualified electors of such city or town and be approved by said qualified electors at an election duly held. Said ordinance containing said pension plan when submitted to the qualified electors for approval, shall be so worded as to authorize the governing body of such city or town to either appropriate yearly out of the general revenue of such city or town a sufficient sum to carry out said pension plan, or to levy yearly a general ad valorem tax sufficient to provide for said pension plan, said sum to be appropriated yearly or to be raised by taxation,

to be in addition to whatever sum, if any, to be contributed by the employees of such city or town to the pension fund of said pension plan.

Sec. 2. Any pension plan devised or formulated by any such city or town which provides that all employees participating therein shall contribute a portion of their weekly, monthly or yearly salary, shall not be compulsory for the employees of such city or town, but shall apply only to those employees of such city or town who signify their willingness in writing to participate therein, and to have deducted from their weekly, monthly or yearly salaries, the sum as specified in said pension plan.

Sec. 3. This Act shall not repeal Articles 6229 to 6243, both numbers inclusive, of the Revised Civil Statutes of Texas, 1925, as amended by Acts of 1933, Forty-third Legislature, page 206, Chapter 94, but the provisions of said Articles 6229 to 6243, as amended, shall not apply whenever a city or town as provided in this Act shall formulate, devise and adopt a pension plan according to the terms and provisions of this Act.

[Acts 1935, 44th Leg., p. 728, ch. 317.]

#### Art. 6243d-1. Policemen's Relief and Retirement Fund

##### Creation of Fund; Definitions

Sec. 1. There is hereby created in all incorporated cities in this State having a population of two hundred and ninety thousand (290,000), or more, according to the preceding Federal Census, a fund to be known as the policemen's relief and retirement fund. Said fund shall be administered in each such city by a board to be known as the policemen's relief and retirement board.

The expression "pension fund," as used herein, shall mean the policemen's relief and retirement fund. The expression "pension board," as used in this Act, means the policemen's relief and retirement board of each such city. All members of the police department of any such city shall participate in said pension fund, and shall be subject to all of the provisions of this Act, save and except special officers, part-time officers, janitors, car washers, and cooks. With the exceptions just named, it is the intention hereof to include everyone who is designated by any such city as a member of said police department, regardless of the particular duty or duties performed by such person. The expressions "member" and "members," as used in this Act, mean members of any such police department who are entitled to participate in said pension fund as above set forth, that is, the entire personnel of any such police department, save and except special officers, part-time officers, janitors, car washers, and cooks, in each city.

##### Pension Board

Sec. 2. Said pension board in each such city shall consist of one person to be appointed by the mayor and confirmed by the city council or governing body of such city, the city con-

troller, or, if there be no city controller, then the person discharging the duties of the city controller in such city, and three (3) persons to be elected from the police department by the members. As soon as practicable after the effective date of this Act, said members of each such police department shall elect said three (3) members of said pension board, one to be elected until the next succeeding January 1st thereafter, and two (2) to be elected until the second January 1st following such election, and thereafter, as the terms expire, new members to said pension board shall be similarly elected to hold office until the second January 1st following their respective elections. In case of vacancies, new members shall be elected to serve the unexpired term. All persons elected to said pension board shall hold office until their successors are elected and qualified. Any member shall be eligible to election to said pension board.

Said pension board shall annually elect a chairman, vice-chairman, and a secretary, from the members of said pension board. Each one so elected, shall serve until his successor is elected.

A meeting of said pension board may be called at any time by the chairman, secretary, or by any two (2) members of such pension board. Three (3) members of said pension board shall constitute a quorum for the transaction of business.

Each member of said pension board shall take an oath that he will well and faithfully perform the duties of a member of such pension board.

No moneys shall be paid out of the pension fund except upon an order by said pension board, duly entered in the minutes.

**Treasurer of Pension Fund**

Sec. 3. The city treasurer of any such city, or the person discharging the duties of the city treasurer, is hereby designated as the treasurer of the said pension fund for said city, and his official bond to said city shall operate to cover his position of treasurer of said pension fund. All moneys of every kind and character collected or to be collected for said fund, shall be paid over to said treasurer, and shall be administered and paid out only in accordance with the provisions of this Act.

**Per Capita Contributions**

Sec. 4. Commencing with the next calendar month, immediately following the effective date of this Act, per capita contributions of all such members of each such police department as participate in such fund, as aforesaid, shall be made to said fund. Said monthly per capita contribution shall be made as follows: The salary and future salary of each member participating in such fund is hereby reduced Three Dollars (\$3) per month, but said Three Dollars (\$3) per month shall be paid by such city into the said pension fund. No other money paid into said pension fund, however, shall be

counted as a part of salary, under any law or ordinance fixing or pertaining to salaries of members, of any such police department.

**Accumulated Funds**

Sec. 5. In all such cities where a general pension fund for city employees has been accumulated but has not been put into operation at the effective date of this Act, the governing body of each such city shall segregate from said fund, the proportion which the total number of members of the police department (eligible to said pension fund) bears to the entire number of all city employees, for whose benefit said fund was accumulated, and shall set aside such sum into the policemen's relief and retirement fund.

**Assignments of Salary to Fund**

Sec. 6. Any members who have or may have any back or past due salary due them, from any such city, may assign all or any portion of such back salary to said pension fund, and such assignments as have or may hereafter be executed by any such members, are hereby validated and shall be recognized by the governing body of any such city, and such sums, if any, shall be paid into the said pension fund.

**Appropriations to Fund Out of General Funds of City**

Sec. 7. Any such city may make additional appropriations from time to time out of its general fund, or otherwise, into the said pension fund, and hereafter when any such city shall make any appropriations for pensions of city employees or place any money into any such account, the proportionate amount thereof shall be placed in the policemen's relief and retirement fund. Said pension fund may also be augmented as follows: By the giving of entertainments and benefit performances; by gifts or donations from any person, firm, or corporation; all rewards hereafter paid to or due individual members for, or on account of service rendered by them as members of the police department, shall be paid into such fund; and said pension fund shall also participate in funds otherwise provided or that shall hereafter be provided by law pertaining to police-pensions of cities of the class herein provided for.

**Investment of Surplus Funds**

Sec. 8. Whenever, in the opinion of the said pension board, there is on hand in said pension fund, a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said pension board is deemed proper, may be invested in securities of the United States, the State of Texas, or of counties, school districts, or municipal corporations. No investment shall be made, however, which does not meet with the approval of the city controller, if any, of such city.

**Benefits to Begin Not Prior to January 1, 1942**

Sec. 9. No benefits of any kind shall be paid out of said fund prior to January 1, 1942.

## Pension Rates

Sec. 10. From and after January 1, 1942, any member who shall have been a member of such police department for the period of twenty-five (25) years, and who shall have reached the age of fifty (50) years, shall be entitled to a retirement pension of Seventy-five Dollars (\$75) per month for the rest of his life upon his retirement from said police department. Upon the completion of the said twenty-five (25) years of service, such pension board shall issue to him a certificate showing that he is entitled to said retirement pension, and thereafter, when such member retires from the police department, whether such retirement be voluntary or involuntary, such monthly payments shall forthwith begin, and continue for the remainder of said member's life. Provided, however, that payments shall not commence until such member is fifty (50) years of age, and further provided that members who are eligible for a pension but who continue in the department shall make their per capita contributions until they retire from the department.

In computing the twenty-five (25) years service required for retirement pension, interruption of less than one year out of service, shall be construed as continuous service and such period out of service shall not be deducted from the twenty-five (25) years, but if out for more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years, no previous service prior to said time shall be counted.

Service with any such city in some other department, prior to January 1, 1939, shall be included in the twenty-five (25) years above provided for, but service after January 1, 1939, must be in the police department. The pension board may, within its discretion, provide for the payment of such retirement pension to a former member or members of the police department who have heretofore served for the twenty-five-year period and who have reached the age of fifty (50) years, and it is the intention hereof to include in the group of former members those who have heretofore been retired by any such city and who are drawing partial pay or compensation from such city.

## Disability Resulting From Performance of Duty

Sec. 11. If any member shall become totally or permanently disabled as a direct and proximate result of the performance of duties in the police department, said member shall be retired on a pension of Seventy-five Dollars (\$75) per month.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties of a police officer.

Before any retirement on disability pension is made, the pension board shall require such medical examination and such other evidence

as it may see fit to establish such total and permanent disability, as above provided.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the pension board and shall submit himself to such further examination as the pension board may require. If any member shall refuse to submit himself to any such examination, the pension board may within its discretion, order said payment stopped. If a member who has been retired under the provision of this Section, should thereafter recover so that in the opinion of the pension board, he is able to perform the usual and customary duties of a police officer, and such member is reinstated or tendered reinstatement in the police department, then the pension board shall order such payments stopped.

Said pension board may, at its discretion, retire on said permanent and total disability pension, those members of said police department who have heretofore become totally and permanently disabled, as that term is above defined.

## Death Resulting From Performance of Duty

Sec. 12. Should any such member die, as a direct and proximate result of injuries received or sickness incurred in line of duty in said police department, the pension board shall order paid to the beneficiaries hereinafter designated, the sum of Seventy-five Dollars (\$75) per month for a period of ten (10) years. Such beneficiaries shall be as follows: The surviving wife, surviving children under the age of sixteen (16) years, and the dependent parent or parents, if any. If there be neither surviving wife, children under the age of sixteen (16) years, nor dependent parents, then no payments shall be made on account of the death of any such member. If there be a surviving wife, but no children under the age of sixteen (16) years, then the entire payment of Seventy-five Dollars (\$75) per month shall be made to such surviving wife. If there be a surviving wife and children under the age of sixteen (16) years, then the payments shall be Thirty-seven Dollars and Fifty Cents (\$37.50) per month to the wife and Thirty-seven Dollars and Fifty Cents (\$37.50) per month payable to the legal guardian of such children, to be administered in accordance with the orders of the Probate Court. As each child becomes sixteen (16) years of age, the children's part of Thirty-seven Dollars and Fifty Cents (\$37.50) per month shall thereafter be for the use and benefit of the children who then remain under the age of sixteen (16) years. When there are no longer any children under the age of sixteen (16) years, the entire amount of Seventy-five Dollars (\$75) per month shall be paid the surviving wife. When there is no surviving wife, but there are surviving children under the age of sixteen (16) years, the entire Seventy-five Dollars (\$75) per month shall be paid to the legal guardian of such children under the age of sixteen (16) years, but such payment shall not

be made for or on account of any child after said child reaches the age of sixteen (16) years. Should such surviving wife thereafter die, then the entire Seventy-five Dollars (\$75) shall likewise be paid for the benefit of such children as remain under the age of sixteen (16) years. If there be neither a surviving wife nor surviving children under the age of sixteen (16), then such payments shall be made to the dependent parent, or parents, if any, of such deceased member. If there be two (2) dependent parents, then the Seventy-five Dollars (\$75) per month shall be divided equally between them, but if there be only one dependent parent, the Seventy-five Dollars (\$75) per month shall be paid to said parent.

The term "dependent parent" means a parent who is principally dependent upon said member for a livelihood.

By the term "surviving wife" is meant the woman, if any, who is the lawful wife of said member at the time of his death.

No death benefits whatever shall be paid after the expiration of ten (10) years from the death of any said member, and no beneficiary shall ever receive more than Seventy-five Dollars (\$75) per month.

In the event of women members of the department, their surviving husbands shall be entitled to the same rights and benefits as have the wives of the male members.

#### Pension to Dependents, When

Sec. 13. When any member who has been retired upon pension, whether retirement pension or disability pension, or when any member who has a pension certificate shall thereafter die from any cause, his pension of Seventy-five Dollars (\$75) per month shall be payable to his dependents, if any, as is provided in the next preceding Section hereof, but only for the unexpired portion of ten (10) years. In computing said ten (10) years, such length of time as a pension may have been paid to said member during his lifetime shall be deducted from such ten-year period, and such dependents shall receive said payment only for the unexpired term of ten (10) years.

#### Refunds on Leaving Service

Sec. 14. If any such member shall leave such police department either voluntarily or involuntarily before he is entitled to a pension, he shall have refunded to him the deductions from his salary, which have been paid into said pension fund. Said payments may be made to him, either in a lump sum or on a monthly basis, as may be determined by the pension board.

Provided, however, that this Section shall be subject to Section 10 and upon a re-entry into the department all such refunds shall be paid back into the pension fund or prior service of such member shall not be counted toward his retirement pension.

#### Reduction of Benefits Authorized in Case Fund Is Depleted

Sec. 15. In the event said pension fund becomes seriously depleted, in the opinion of the pension board, said pension board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners or beneficiaries as and when said fund is, in the opinion of the pension board, sufficiently re-established to do so.

#### Legal Counsel for Board

Sec. 16. The city attorney of any such city shall render such legal service, and without additional compensation, as such pension board may request him to do. The pension board may, if it deems necessary, employ additional legal assistance and pay reasonable compensation therefor, out of said police pension fund. Said pension board, may at its discretion, from time to time, employ the services of an actuary, and pay him reasonable compensation out of said police pension fund.

#### Pensions Not Subject to Execution, Etc.

Sec. 17. No portion of any such pension fund, either before or after its order of disbursement by said pension board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any Court of this State for the payment or satisfaction in whole or in part out of said pension fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such police pension fund or any part thereof, or any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purposes whatsoever.

#### Severability Clause

Sec. 18. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

#### Act to be Cumulative to Other Laws

Sec. 19. The provisions hereof shall be cumulative of and in addition to all other laws relating to pensions, which laws are hereby preserved and continued in force and effect, provided, however, that in the event of any conflict, the provisions of this law shall control, and police departmental pensions in the

cities covered by this Act shall be administered in accordance with this law.

[Acts 1939, 46th Leg., p. 105.]

### Art. 6243e. Firemen's Relief and Retirement Fund

#### "Firemen's Relief and Retirement Fund" Created

Sec. 1. For the purpose of this Act, there is hereby created in this State a special fund to be known and designated as the "Firemen's Relief and Retirement Fund" and it shall be the duty of the State Treasurer and he is hereby directed to pay over, transfer, and convert any and all moneys received by him from collection of the tax herein levied to such Fund, which Fund shall, at all times, be kept under his official bond and oath of office, separate and distinct from any other Fund of this State, with a public record thereof showing all receipts and disbursements.

#### Tax on Gross Premiums of Insurance Companies

Sec. 2. For the purpose of providing permanent funds and revenue for the Firemen's Relief and Retirement Fund hereby created, there is hereby levied and assessed against each and every insurance company, whether a firm, partnership, corporation, mutual or reciprocal company, transacting in this State the business of fire insurance, an additional occupation or license tax of two (2) per centum of all gross premium receipts received or collected from persons or property within this State during the preceding year ending December 31st, provided, the said two (2) per cent shall not be passed on to the purchaser of insurance and the Insurance Department shall not allow such two (2) per cent as additional charge in making rates of fire insurance in the State of Texas. The gross premium receipts herein referred to shall be reported by said insurance companies to the Commissioner of Insurance subject to the same credits and deductions for capital investment, re-insurance and return premium paid policyholders; the amount of the tax thereon shall be paid in addition to, at the same time and in the same manner as is now provided by Article 7064 of the Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof, and which said tax when so paid and received by the State Treasurer, less the proportion thereof for public school purposes, shall be set aside, deposited into and transferred to and for the use, benefit, and purposes of said Firemen's Relief and Retirement Fund and/or disbursed therefrom as herein provided and directed.

#### Composition of Board of Trustees and Powers

Sec. 3. All incorporated cities and towns in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer, with fire fighting apparatus and equipment of the value of One Thousand Dollars (\$1000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, char-

ter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse such Fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas." The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively. Within thirty (30) days after this Act takes effect, the fire department of any such city or town as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city or town. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. Said Board of Trustees shall elect annually from among their number a vice-chairman, who shall act as chairman in the absence or disability of the mayor-chairman. Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of said Board of Trustees. The city or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such. Said Board of Firemen's Relief and Retirement Fund Trustees of each such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein pro-

vided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund, together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses. A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occur in the membership of said Board of Trustees by reason of the death, resignation, removal, or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded.

**Cities of 500,000 or More Population; Composition and Duties of Board of Trustees**

Sec. 3A. In cities having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census, and only in such cities, the composition and duties of Boards of Firemen's Relief and Retirement Fund Trustees shall be subject to and controlled by the provisions of this Section 3A as well as by the provisions of Section 3 of this Act. All provisions of Section 3 of this Act which conflict with this Section are hereby declared to be inapplicable to cities having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census.

In all such cities of more than five hundred thousand (500,000) population Boards of Firemen's Relief and Retirement Fund Trustees shall be constituted as follows:

- (a) The mayor or his duly appointed and authorized representative;
- (b) The city treasurer, or if no city treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer;
- (c) Five (5) members of the regularly organized active fire department of the city, to be selected by vote of the members of such fire department.
- (d) Two (2) resident citizens of such city, to be selected as hereinafter provided.

On the first Monday in the month of January after the effective date of this section of this Act said members of such fire department shall elect by a majority vote five (5) of its members to serve as members of said Board of Trustees.

Three (3) of the members so elected shall be elected from the Suppression Division of said fire department. One (1) member so elected from said Suppression Division shall have the rank of Private or Chauffeur, and the position on the Board to which such member is elected shall be designated as Position I. One (1) member so elected from said Suppression Division shall have the rank of Captain, and the position on the Board to which such member is elected shall be designated as Position II. One (1) member so elected from said Suppression Division shall have the rank of Battalion Chief or District Chief or Deputy Chief or Assistant Chief, and the position on the Board to which such member is elected shall be designated as Position III.

One (1) of the members so elected shall be elected from among those fire department members who devote full time to prevention and investigation of fire or who are permanently assigned in the Record Division or Fire Chief's Office and who are not members of the Suppression Division; and the position on the Board to which such member is elected shall be designated as Position IV.

One (1) of the members so elected shall be elected from the Fire Alarm Operators Division or the Fire Department Repair Division, and the position on the Board to which such member is elected shall be designated as Position V.

One (1) of said members so elected shall serve for one (1) year, two (2) of said members shall serve for two (2) years, and two (2) of said members shall serve for three (3) years as members of said Board of Trustees.

Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years are to be chosen by the elected members of the Pension Board, being neither employees nor officers of said city. One (1) of these appointed members shall be appointed for a term of one (1) year and one (1) of these appointed members shall be appointed for a term of two (2) years. Annually thereafter on the third Monday in January, the elected members of the Pension Board are to fill one (1) of the appointed positions of the Pension Board for a period of two (2) years. The appointed members of the Pension Board are to take the same oath of office required of the elected members. A vacancy occurring by death, resignation or removal of a member chosen by the elected members of the Pension Board shall be filled by the elected members of the Board. A member who is selected to fill a vacancy shall hold office for the unexpired term of the appointed member who vacated his position. These two (2) appointed positions of the Pension Board are to be filled by the elected members of the Pension Board on the third Monday in January following the effective date of this Section of this Act.

Each member of the Board of Trustees shall, within ten (10) days after his election, take an oath of office that he will diligently and hon-

estly administer the affairs of the Firemen's Relief and Retirement Fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

Said Board of Trustees shall elect annually from among their number a Chairman and a Vice-chairman and a Secretary.

The terms of office of those persons who are members of existing Boards of Trustees in cities coming under the provisions of this section at the time this section takes effect shall automatically expire on the first Monday in the first January after such effective date of this section. Annually thereafter on the first Monday in each January vacancies on such Boards of Trustees in the positions provided for fire department members shall be filled by election as hereinabove provided, and such Board members shall be elected for three-year terms.

The Secretary of the Board of Trustees shall, within seven (7) days after each meeting of the Board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

**Cities of Less Than 210,000; Composition and Duties of Board of Trustees**

Sec. 3B. (a) This section applies to all cities having a population of less than two hundred ten thousand (210,000), according to the last preceding Federal Census in which there is a "full paid" fire department participating in a Firemen's Relief and Retirement Fund.

(b) All of Section 3 of this Act applies to the Boards in these cities, except for those provisions which conflict, in which case this section controls.

(c) The Board of Firemen's Relief and Retirement Fund Trustees shall consist of the following:

(1) the mayor or his duly appointed and authorized representative;

(2) the chief financial officer, or if there is no chief financial officer, then the city treasurer, city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance performs the duties of chief financial officer;

(3) three (3) members of the regularly organized active fire department of the city, to be elected by a majority vote of the members of the department; and

(4) two (2) legally qualified taxpaying electors of the city, who have resided in that city for the last three (3) years and are neither employees nor officers of that city, to be chosen by the unanimous vote of the members of the Board provided for in Subdivisions (1), (2), and (3) of this subsection.

(d) The members of the fire department presently serving on the Board of Trustees shall continue in that capacity. Annually, on the first Monday in the month of January after the effective date of this section, the participating members of the Fund shall elect by se-

cret ballot and certify one member of the Board for a three-year term.

(e) The two (2) appointed members shall be chosen on the third Monday in the month of January following the effective date of this section. One of the members shall be appointed for a term of one year and the other shall be appointed for a term of two (2) years. Annually, thereafter, on the third Monday in January, a qualified member will be chosen to serve as an appointed member for a two-year term.

(f) The Board of Trustees shall elect annually from among their number a Chairman, Vice-Chairman and a Secretary.

(g) Each member of the Board of Trustees shall, within ten (10) days after taking office, take an oath of office that he will diligently and honestly administer the affairs of the Firemen's Relief and Retirement Fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) If an appointed member of the Board dies, resigns or is removed, the members provided for in Subdivisions (1), (2) and (3) of Subsection (c) shall choose another qualified person to fill the vacancy. The person chosen shall serve for the unexpired term of the person he is replacing.

(i) The Secretary of the Board of Trustees shall, within seven (7) days after each meeting of the Board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

**Pro Rata Disposition of Moneys by State Treasurer**

Sec. 4. The State Treasurer shall, not later than the first day of May of each year after this Act takes effect, apportion and pay over to the various Boards of Trustees, upon a pro rata ratio basis of the insurance written upon property within the corporate limits of such city or town, all moneys coming into his hands annually from the gross premium receipts tax herein provided; save and except, the sum of Fifty Thousand Dollars (\$50,000) less expenses of administration as herein provided, the balance of which shall be kept and retained by the State Treasurer in the said Firemen's Relief and Retirement Fund as an emergency reserve fund for the purpose herein provided.

**Contributions Accepted From Any Source**

Sec. 5. In addition to the apportionment from the State Treasurer from the tax collected from insurance companies, and in addition to the amounts deducted from salaries or paid by members of the fire department as is in this Act provided, the Board of Firemen's Relief and Retirement Fund Trustees of that city or town coming within the provisions of this Act shall have the power and authority to accept and receive for the use and benefit of said Firemen's Relief and Retirement Fund of that city or town, contributions of money from any source; rewards, fees, gifts, or emoluments in money that may be paid or given for, or on ac-

count of, any service of the fire department or any member thereof except when allowed to be retained by said member by resolution of the Board of Trustees, or when given to endow a medal or other permanent competitive or merit reward, and the earnings upon the deposit, loan, or investment of said Fund or any part thereof, all of which are hereby directed paid into said Fund to be used for the purposes for which said Fund is created.

#### Retirement Age and Pension

Sec. 6. Any person who has been duly appointed and enrolled and who has attained the age of fifty-five (55) years, and who has served actively for a period of twenty (20) years in any rank, whether as wholly paid, part-paid or volunteer fireman, in one (1) or more regularly organized fire departments in any city or town in this State having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may come within the provisions of this Act, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one half ( $\frac{1}{2}$ ) of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month, except as hereinafter provided; such average monthly salary to be based on the monthly average of his salary for the five-year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars (\$50) or less per month, or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars (\$25). Notwithstanding any other provision of this Act, it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty-five (55) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman, when reaching the age of fifty-five (55) years, will be entitled to the retirement and other applicable benefits of this Act; provided further, that when any fireman shall have been issued such certificate he shall, when reaching retirement age, be entitled to all the applicable benefits of the Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate. Provided further, that in order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement. Provided, further, that any regularly organized "full paid" fire department in any city or town in this State now within or that may come within the provisions of this Act may, upon a majority vote of said Board of Trustees, in-

crease the maximum pension to One Hundred and Fifty Dollars (\$150) per month.

#### Additional Pension Allowances for Certain Firemen; Death of Pensioner; Widow's Benefits; Election

Sec. 6A. Any fireman who is a member of a "full paid" fire department and who shall be entitled to be retired under the provisions of Section 6 of this Act, and who shall retire under Section 6 or Section 7 or Section 7A with additional time of service and of participation in a Fund after the date upon which he became entitled to be retired or with more than twenty-five (25) years of service and of participation in a Fund, shall be entitled to be paid from the Firemen's Relief and Retirement Fund of the city or town in which he last served, in addition to any other benefits provided by this Act, an additional monthly pension allowance which shall be computed as follows: the sum of Four Dollars (\$4) per month shall be allowed for each full year of service and of participation in a Fund after the date upon which such fireman shall have become entitled to be retired under Section 6, or after the date upon which such fireman shall have completed twenty-five (25) years of service and of participation in a Fund, whichever date shall first occur; provided, however, that such additional pension allowance shall not exceed the sum of Fifty-six Dollars (\$56) per month.

If any person shall die from any cause whatsoever and if, at the time of death, such person shall have retired with or shall have been entitled to retire with an additional monthly pension allowance as hereinabove provided by this section, and if such deceased shall leave surviving him a widow who married the deceased prior to his retirement, then a sum equal to two-thirds ( $\frac{2}{3}$ ) of the amount of the additional monthly pension allowance with which the deceased was retired or entitled to retire shall be paid monthly to the widow of such deceased so long as she remains his widow, and such allowance provided by this paragraph shall be paid in addition to any other benefits provided by this Act.

Provided, however, that the provisions of this section shall not be applicable to any particular relief and retirement fund until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this section within that Relief and Retirement Fund.

#### Cities of 1,200,000 or More; Pension and Additional Pension Allowances; Service Retirement; Election; Contributions; Certificate of Service; Limits; Annual Adjustments

Sec. 6B. (a) Any person who has been duly appointed and enrolled and who has attained the age of fifty (50) years, and who has served actively for a period of twenty (20) years or more and has participated in a fund in one or more regularly organized fire departments in any city in this State having a population of one million, two hundred thousand (1,200,000)

or more according to the last preceding Federal Census, which city is now within or may come within the provisions of this Act, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to fifty percent (50%) of his average salary for the highest thirty-six (36) months of his service; and provided further, any such fireman shall be entitled to be paid in addition to the benefits provided for in this paragraph an additional pension allowance of one percent (1%) of his average monthly salary for the highest thirty-six (36) months during his participation for each year of service after the date upon which such fireman shall be entitled to be retired.

(b) Provided further, however, a fireman who has twenty (20) years of service and participation in a fund under this section may, if he so elects, be retired from such department and receive a monthly pension allowance of thirty-five percent (35%) of his average monthly salary for the highest thirty-six (36) months during his participation.

If such fireman shall participate in the fund for a period in excess of twenty (20) years he shall, in addition to the monthly pension allowance of thirty-five percent (35%) be paid an additional monthly pension allowance equal to three percent (3%) of his average monthly salary for each year of service in excess of twenty (20) years until such fireman completes twenty-five (25) years of service thereby providing a monthly pension allowance equal to fifty percent (50%) of such fireman's average monthly salary for the highest thirty-six (36) months during his participation.

If such fireman remains in the active service for a period in excess of twenty-five (25) years, he shall receive, in addition to the pension allowances provided for in Subsection (b), an additional monthly pension allowance equal to one percent (1%) of his average salary for each year of participation in excess of twenty-five (25) years.

(c) Provided further that the maximum pension allowance to be received by any fireman under this section or Section 7B or 7C of this Act, shall not exceed sixty percent (60%) of the fireman's average monthly salary for the highest thirty-six (36) months during his participation.

(d) Notwithstanding any other provisions of this Act, it is specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of fifty (50) years, may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that the fireman, when reaching the age of fifty (50) years, will be entitled to the

retirement and other applicable benefits of this Act; provided further, that when any fireman shall have been issued such certificate he shall, when reaching retirement age, be entitled to all the applicable benefits of this Act, even though he shall not have been engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance, shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

(e) All firemen entering a fire department coming within the provisions of this section after the effective date of this subsection shall retire under the benefit provisions of Subsection (b) unless the retirement is for disability.

(f) All firemen who retire under the provisions of this section, or Section 7B or 7C after the effective date of this subsection shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent (3%) annually notwithstanding a greater increase in the consumer price index.

Cities of 1,200,000 or More; Pension Allowance at Age of 50; Calculation

Sec. 6B-1. Any fireman in any city having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, and only in such cities, who has served in such fire department for a period of at least ten (10) years and for a period of less than twenty (20) years shall be entitled to a pension allowance at age fifty (50) years. Such pension allowance shall be calculated as follows:

(1) The monthly pension allowance shall be equal to the sum of one and seven-tenths percent (1.7%) of his average monthly salary multiplied by the number of years of service of such fireman.

(2) The average monthly salary shall be for the highest thirty-six (36) months of service of such fireman.

(3)(a) In the event such fireman dies before he has reached the age of fifty (50) years, his widow or other beneficiaries shall be eligible for a pension allowance on the date the deceased fireman would have been fifty (50) years of age.

(b) In the event the fireman dies after he reached fifty (50) years of age, his widow or other beneficiaries shall be eli-

gible for a pension allowance. Said pension allowances shall be governed by the provisions of Section 7C, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

(4) The provisions of this section shall be applicable to those firemen who are terminated after the effective date of this section. In the event a fireman is under suspension on the effective date of this section, he shall not be considered terminated until his final appeal is exhausted.

Cities of 240,000 to 295,000 Population; Pension Allowances; Increases

Sec. 6C. (a) Any person who has been duly appointed and enrolled and who has attained the age of fifty-five (55) years or served actively for a period of thirty-five (35) years regardless of age, such service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city or town in this State having a population of not less than two hundred forty thousand (240,000) nor more than two hundred ninety-five thousand (295,000), according to the last preceding Federal Census may retire from such service or department and thereupon is entitled to receive from the Firemen's Relief and Retirement Fund of that city or town a monthly pension equal to the sum of three-fourths of one per cent (0.75%) of his average monthly salary multiplied by his service, if any, prior to 1941, plus one and seven-tenths per cent (1.7%) of his average monthly salary multiplied by his service after 1940.

(b) The factor of one and seven-tenths per cent (1.7%) may be increased in increments of one-tenth of one per cent (0.1%), not to exceed a maximum of two per cent (2%) provided that:

- (1) the increase is first approved by an actuary; and
- (2) the increase applies only to active full time firemen in the department at the time of the increase and those who enter the department thereafter.

(c) The average salary means the monthly average of the fireman's salary for the highest three calendar years during his period of service, excluding overtime pay and any temporary pay in higher classification.

(d) Any person who was covered by the Act on January 1, 1965, may retire under the conditions of Section 6 and is entitled to receive the benefits provided in Section 6 and the first paragraph of Section 6A in lieu of the benefits provided in this section.

(e) Any person who continues to serve actively beyond the date he would normally retire shall continue to make contributions to the fund and accrue pension credits to the date of actual retirement.

(f) Benefits shall be payable on the first day of each month commencing with the month

following the date as of which the member retired.

Cities and Towns of 240,000 to 295,000; Cost of Living Adjustment

Sec. 6C-1. Any fireman and beneficiaries of a fireman in any city or town in this State having a population of not less than two hundred forty thousand (240,000) nor more than two hundred ninety-five thousand (295,000), according to the last preceding Federal Census, who retires or has retired or who receive benefits under Sections 6C, 7D, or 12B of this article, shall be entitled to an annual cost of living adjustment of his pension allowance and their benefits based on the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor; provided, however, that such adjustment must first be approved by a majority of the members of the Board of Firemen's Relief and Retirement Fund Trustees of the city and an actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits shall never be more than the amount granted the fireman or his beneficiaries on the date of his retirement or death increased by a maximum of two percent (2%) annually notwithstanding a greater increase in the consumer price index.

Cities and Towns of 240,000 to 295,000; Pension Allowance at Age of 55; Conditions

Sec. 6C-2. (a) Any fireman in any city or town in this State having a population of not less than two hundred forty thousand (240,000) nor more than two hundred ninety-five thousand (295,000), according to the last preceding Federal Census, who has served in the fire department of the city for a period of at least ten (10) years and who has contributed to the Firemen's Relief and Retirement Fund of the city for a period of at least ten (10) years, shall be entitled to receive a pension allowance at the age of fifty-five (55) years, provided, that the following conditions are met:

(1) upon termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the fireman's highest sixty (60) months of salary within the ten (10) or more years of service; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 6C of this article, in effect at the time the fireman terminated his employment.

(b) In the event the fireman dies before he has reached the age of fifty-five (55), or in the event the fireman dies after he has retired under the provisions of this section, his widow shall receive seventy-five percent (75%) of his

pension allowance provided for under this section.

(c) Any fireman qualifying for a pension allowance under Subsection (a) of this section may, on or after termination of his employment, elect to withdraw his contributions from the fund, thereby forfeiting any rights he may have had in the fund.

(d) The provisions of this section shall not become operable until a majority of the members of the Board of Firemen's Relief and Retirement Fund Trustees of the city and an actuary so approve.

*Cities and Towns of Less Than 190,000; Pension; Certificate of Completion of Service Period; Additional Pension Allowance; Widow's Benefits; Applicability of Section; Increase*

Sec. 6D. (a) Any full paid fireman who has been duly appointed and enrolled and who has attained the age of fifty (50) years, and who has served actively for a period of twenty (20) years in any rank, in one (1) or more fully paid fire departments in any city or town in this State having a population of less than one hundred ninety thousand (190,000), according to the last preceding Federal Census, which city or town is now within or may come within the provisions of this Act, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half ( $\frac{1}{2}$ ) of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month, except as hereinafter provided; such average monthly salary to be based on the monthly average of his salary for the five-year period preceding the date of such retirement.

(b) Notwithstanding any other provisions of this Act; it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty (50) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman when reaching the age of fifty (50) years, will be entitled to the retirement and other applicable benefits of this Act; provided further, that when any fireman shall have been issued such certificate he shall when reaching retirement age, be entitled to all the applicable benefits of this Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate.

(c) In order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement as follows:

(1) If he stays in the department after receiving the 20-year certificate he shall continue to pay until he leaves the department or retires.

(2) However, after he has the 20-year certificate and leaves the department before reaching retirement age, he shall not be required to pay his contribution. But upon reaching retirement age he shall be entitled to all benefits under this Act, his widow shall likewise be entitled to all benefits, and children if they meet the age requirements under this Act.

(d) (1) Any fireman who is a member of a full-paid fire department and who shall be entitled to be retired under the provisions of this Section, and who shall retire under this Section or Section 7 or Section 7A with additional time of service and of participation in a Fund after the date upon which he became entitled to be retired or with more than twenty (20) years of service and participation in a Fund, shall be entitled to be paid from the Firemen's Relief and Retirement Fund of the city or town in which he last served, in addition to any other benefits provided by this Act, an additional monthly pension allowance which shall be computed as follows: the sum of Four Dollars (\$4) per month shall be allowed for each full year of service and of participation in a Fund after the date which such fireman shall have become entitled to be retired under this Section, or after the date upon which such fireman shall have completed twenty (20) years of service and of participation in a Fund, whichever date shall first occur; provided, however, that such additional pension allowance shall not exceed the sum of Fifty-six Dollars (\$56) per month.

(2) If any person shall die from any cause whatsoever, and if, at the time of death, such person shall have retired with or shall have been entitled to retire with an additional monthly pension allowance as hereinabove provided by this Section, and if such deceased shall leave surviving him a widow who married the deceased prior to his retirement then a sum equal to two-thirds ( $\frac{2}{3}$ ) of the amount of the additional monthly pension allowance with which the deceased was retired or entitled to retire shall be paid monthly to the widow of such deceased so long as she remains his widow, and such allowance provided by this paragraph shall be paid in addition to any other benefits provided by this Act.

(e) None of the provisions of this Section 6D may apply or become effective in a fully paid fire department in a city or town in this State having a population of less than one hundred and sixty-five thousand (165,000), according to the last Federal Census, until the following requirements are fulfilled:

(1) An actuary must approve the application of the pension provisions of this Section to the fire department;

(2) The Board of Trustees must approve all increases; and

(3) The majority of the participating members must vote in favor of the increases.

(f) The provisions of this Section 6D are not mandatorily applicable to any local firemen's pension group, unless approved by vote as provided in Subsection (e) of this Section, and a local firemen's pension group is not required to take any action under this Section.

(g) In addition to the other provisions of this Section, any "full paid" fire department in any city or town in this State that comes within the provisions of this Section 6D may, upon a majority vote of the Board of Trustees, increase the maximum pension to One Hundred and Fifty Dollars (\$150) per month.

**Retirement on Disability**

Sec. 7. Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the State having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within, or may hereafter come within the provisions of this Act, shall become physically or mentally disabled while in and/or in consequence of, the performance of his duty, said Board of Trustees shall upon his request, or without such request if it shall deem proper and for the good of the department, retire such person from active service either upon total or partial disability as the case may warrant and shall order that he be paid from such Fund, (a) if for total disability, an amount equal to one-half (1/2) the average monthly salary of such fireman, not to exceed the sum of One Hundred Dollars (\$100) per month, except as hereinafter provided, such average monthly salary to be based on the monthly average of his salary for the five (5) year period, or so much thereof as he may have served, preceding the date of such retirement; provided that if such average monthly salary be Fifty Dollars (\$50) or less per month, or if he be a volunteer fireman with no salary, the amount so ordered paid shall not be less than Twenty-five Dollars (\$25) per month; and provided further that any regularly organized "full paid" fire department in any city or town in this State now within or that may come within the provisions of this Act may, upon a majority vote of the participating members of that respective Fund, increase the maximum disability pension to One Hundred and Fifty Dollars (\$150) per month; or, (b) if the disability be less than total, then such sum as in the judgment of the Board of Trustees may be proper and commensurate with the degree of disability; provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

**Death or Disability From Cause Not Resulting From Performance of Duties**

Sec. 7A. (a) Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in

the state having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may hereafter come within the provisions of this Act, shall die or become disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a pension allowance shall be paid to the widow or fireman. The monthly pension allowance shall be computed as follows: five per cent (5%) of the total amount the individual fireman or widow would have been entitled to receive under Section 7 or Section 12 had such death or disability occurred as the result of such fireman's being incapacitated or killed while in and/or in consequence of the performance of his duty as a fireman shall be allowed for each year of participation in the relief and retirement fund, provided that such allowance shall not be computed on the basis of more than twenty (20) years. In no event, however, shall such fireman or widow receive an amount less than Fifty Dollars (\$50) per month. If such fireman be a volunteer fireman and thereby receiving no salary, the amount so ordered paid, if all of the other conditions have been met, shall be not less than Twelve Dollars and Fifty Cents (\$12.50) per month.

(b) If any such fireman who is a member of a "full paid" fire department shall die from any cause not growing out of and not in consequence of his duty as a fireman and shall leave surviving him a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly pension allowance as follows:

(a) to the guardian of each child the sum of Twenty Dollars (\$20) per month until such child reaches the age of eighteen (18) years;

(b) in the event the widow dies after being entitled to her allowance as herein provided or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Forty Dollars (\$40) per month for each such dependent minor child; and

(c) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees;

provided, however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such

child becomes eighteen (18) years of age or marries.

(c) Provided, however, that the provisions of this Section shall not apply if the death or disability of the fireman was caused while such fireman was gainfully employed by someone other than the respective fire department for which he was employed or contributed his services.

(d) Any city with a population of less than one hundred twenty-five thousand (125,000), according to the last preceding Federal Census, which has a full paid fire department may, upon a majority vote of the members of the fire department, pay the pension allowances provided by this section even though the fireman was killed or disabled while he was gainfully employed by someone other than the respective fire department for which he was employed or contributed his services.

(e) The provisions of this Section as amended shall be automatically applicable to any relief and retirement fund in which such Section was included by majority vote of the members prior to the effective date of this amending Act, provided, however, that the paragraph providing benefits for surviving beneficiaries of a member of a "full paid" fire department shall only be applicable to beneficiaries of a member of a "full paid" fire department. Provided further, however, that the provisions of this Section shall not be applicable to any particular relief and retirement fund in which such Section was not included prior to the effective date of this amending Act until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this Section within the Relief and Retirement Fund. At such election the effective date of these provisions shall also be set.

Cities of 1,200,000 or More; Disability Retirement;  
Amount of Pension; Service Retirement  
Election

Sec. 7B. (a) Whenever a person serving as an active fireman duly enrolled in any regularly active fire department and participating in a fund in any city in the State having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, which city is now within or may come within the provisions of this Act, shall become physically or mentally disabled while in and/or as a consequence of the performance of his duty or shall become physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of twenty (20) years or more, said Board of Trustees shall, upon his request, or without such request, if they determine that such fireman is not capable of performing the usual and customary duties of his classification or position, retire such fireman on a monthly disability allowance of an amount equal to fifty percent (50%) of his average monthly salary for the highest thirty-six (36)

months during his service, or so much thereof as he may have served.

(b) If such fireman was eligible to be retired under the provisions of Section 6B, he may elect to have his monthly pension allowance calculated under that section.

Cities of 1,200,000 or More; Death or Disability From Cause Other Than Performance of Duties; Monthly Pension Allowance to Fireman or Beneficiaries; Computation; Service Retirement Election; Annual Adjustments

Sec. 7C. (a) Whenever a person serving as an active fireman duly enrolled in any regularly active fire department and participating in a fund in any city in the State having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, which city is now within or may hereafter come within the provisions of this Act, shall die or become disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to such fireman or his beneficiaries.

(b) Such monthly pension allowance shall be computed as follows:

(1) If such fireman shall become disabled, he shall be paid a monthly pension allowance equal to twenty-five percent (25%) of the average monthly salary of such fireman, plus two and one-half percent (2½%) of such average monthly salary for each full year of service and of participation in a fund, provided, however, that such monthly pension allowance shall not exceed fifty percent (50%) of such average monthly salary. The average monthly salary shall be based on the monthly average of such fireman's salary for the highest thirty-six (36) months during his service, or so much thereof as he may have served preceding the date of such retirement.

(2) If such fireman was eligible to be retired under the provisions of Section 6B, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.

(3) If such fireman shall die and shall leave surviving him both a widow who married such fireman prior to his retirement, and a child or children of such fireman under the age of eighteen (18) years, said Board of Trustees shall order paid to the widow of such fireman, a monthly pension allowance equal to one-half (½) of the amount such fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection; and in addition thereto the Board of Trustees shall order paid to such widow or other person having the care and custody of such child or children under the age of eighteen (18) years a monthly pension allowance, for the use and benefit of such child, or children, equal to the amount hereinabove provided for the widow. If

such fireman shall leave no child under the age of eighteen (18) years surviving him or if at any time after the death of such fireman no child is entitled to allowance, then the monthly pension allowance to be paid such widow, shall be equal to the full amount such fireman would have been entitled to receive, if disabled under Subdivision (1) of this subsection; provided, however, that such allowance to a widow, as herein provided if no child is entitled to allowance, shall not exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary for the position of pipeman at the time of the death of such fireman.

(4) If such fireman shall die and if his widow dies after being entitled to her allowance as herein provided, or in the event that there be no widow to receive an allowance, then the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of eighteen (18) years, to the person having the care and custody of such child or children shall be computed as follows: an amount equal to one-half ( $\frac{1}{2}$ ) of the amount such fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of such fireman's children under the age of eighteen (18) years, provided that the total monthly pension allowance provided hereby for children shall not exceed the amount to which such fireman would have been entitled under Subdivision (1) of this subsection, nor shall such allowance for such children exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary provided for the position of pipeman at the time of the death of such fireman.

(5) If such fireman shall die and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half ( $\frac{1}{2}$ ) of the amount such fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of such deceased fireman upon proof to the Board of Trustees that such parent was dependent upon such fireman immediately prior to the death of such fireman, provided that the total monthly pension allowance provided hereby for parents shall not exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary provided for the position of pipeman at the time of the death of such fireman.

(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided, however, if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is fur-

ther entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(d) Provided further, that the provisions of this section shall not be applicable to a fireman or his beneficiaries if such fireman's death or disability results from suicide or attempted suicide before such fireman shall have completed two (2) years of service with the fire department for which he was employed.

(e) The wife of a deceased fireman who had served actively for a period of twenty (20) years or more in a regularly active fire department as defined in Subsection (a), above, shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after such fireman died and she became a widow. Provided, further, however, a widow covered under this section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.

(f) The monthly pension allowance of beneficiaries of deceased firemen who retired after the effective date of this subsection shall have their monthly pension allowances provided for under this section or Section 12A adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the beneficiaries upon the death of the member without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the beneficiaries upon the death of the member increased by three percent (3%) annually notwithstanding a greater increase in the consumer price index.

Retirement for Disability; Cities of 240,000 to  
295,000 Population

Sec. 7D. (a) A person, serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the state having a population of not less than two hundred forty thousand (240,000) nor more than two hundred ninety-five thousand (295,000), according to the last preceding Federal Census, who becomes totally and permanently disabled, the Board of Trustees shall, upon his request, or without his request if it shall deem proper and for the good of the department, retire such person from active service and order that he be paid from the Firemen's Relief and Retirement Fund of such city or town a month-

ly amount equal to his accrued unreduced pension as determined under Subsection (a), Section 6C. If a person becomes totally and permanently disabled while in or as a consequence of the performance of his duty, the amount to be paid shall not be less than Two Hundred Dollars (\$200) and if a person becomes disabled from any other cause, the amount to be paid shall not be less than One Hundred Dollars (\$100).

(b) When the disability of a person who has been granted a pension under Subsection (a) ceases, such pension shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

(c) The provisions of this section shall apply even though the fireman was disabled while gainfully employed by someone other than the respective fire department for which he was employed.

#### Cities With Fully Paid Fire Departments; Transfer of Firemen

Sec. 7E. (a) This Section applies to all cities having an organized "fully paid" fire department covered by a Firemen's Relief and Retirement Fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than thirty-five (35) years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the Board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent (4%) interest.

(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent (4%) interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

#### Modification of Benefits and Eligibility

Sec. 7F. This section applies to all cities and towns which are now within or which may hereafter come within the provisions of this Act. The Board of Trustees, as prescribed by law, of any such city or town may modify or change in any manner whatsoever any of the benefits provided hereunder and may modify or change in any manner whatsoever any of the

eligibility requirements for such benefits provided that:

(1) the change or modification is first approved by a qualified actuary selected by a four-fifths vote of the Board of Trustees of the Firemen's Relief and Retirement Fund; such qualified actuary shall be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the change or modification by a secret ballot;

(3) the change or modification applies to all firemen, both paid and volunteer, in any department at the time of the change or modification and those who enter the department thereafter. The change or modification may, but need not, apply to firemen no longer in the department who are either receiving or are entitled to receive benefits under the department's pension plan; and

(4) the change or modification does not deprive a member, without his written consent, of a right to receive benefits hereunder which have already become fully vested and matured in such member.

#### Pension Allowances for Totally Disabled Children of Firemen

Sec. 7G. (a) If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(b) This Section does not apply to any particular relief and retirement fund until after an election is held and the majority of the participating members of that fund vote to include the provisions of this Section within that fund.

#### Compensation on Temporary Disability

Sec. 8. Whenever any duly enrolled member of any regularly organized active fire department of any city or town now coming within or that may hereafter come within the provisions of this Act as herein limited, on account of accident or other temporary disability caused or sustained while in, and/or in consequence of the performance of his duties, be confined to any hospital or to his bed and/or shall require the professional services of a physician,

surgeon or nurse, said Board of Trustees shall upon presentation of properly itemized and verified bills therefor, order paid from the Firemen's Relief and Retirement Fund of that city or town, all necessary hospital, physician's, surgeon's, nurse's and/or medicine bills or expenses and not less than Five Dollars (\$5) nor more than Fifteen Dollars (\$15) per week to such fireman during such temporary disability; provided however, that in no case shall the amount or amounts so paid for such bills and expenses exceed the aggregate sum of One Hundred Dollars (\$100) in any one month; and provided further, that the benefits provided by this Section shall not apply to any city or town having a fully paid fire department.

#### Certificates of Disability

Sec. 9. No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board of Trustees, certificates of his disability or eligibility signed and sworn to by said person and/or by the city or town physician, if there be one, or if none, then by any physician selected by the Board of Trustees. Said Board of Trustees, in its discretion, may require other or additional evidence of disability before ordering such retirement or payment aforesaid.

Any fireman or beneficiary who shall be entitled to receive a pension allowance under any provision of this Act shall be entitled to receive such allowance from and after the date upon which such fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that such fireman may remain on the payroll of his fire department or receive sick leave, vacation or other pay after the termination of his regular duties as a fireman; provided that, in the event of a delay resulting from the requirements of the first paragraph of this section, such fireman or beneficiary shall, when such allowance is approved by the Board, be paid the full amount of the allowance which has accrued since the termination of such fireman's regular duties as a fireman.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a Fund under the provisions of more than one section of this Act, such fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid; provided however, that any payments provided by Section 6A or Section 8 shall be made in addition to payments provided by any other section.

#### Contributions by Participants Deducted From Salaries

Sec. 10. Each city or town in which a Firemen's Relief and Retirement Fund has been created prior to the time at which this amending section of this Act takes effect and which has a part-paid or volunteer fire department, or the governing body of such city or town, shall henceforth be authorized to deduct from

the salary or compensation of each fireman who is participating in such Fund when this amending section takes effect, or to collect from each such fireman, whatever amount shall have been authorized, or agreed to, by the filing by such fireman, with the Secretary-Treasurers of the Board of Firemen's Relief and Retirement Fund Trustees of such fireman's city or town, of a statement in writing under oath that he desires to participate in the benefits from such Fund, giving the name and relationship of his then actual dependents and authorizing said city or town or the governing body thereof to deduct not less than one (1) per centum nor more than three (3) per centum, the exact amount thereof to be determined by the vote of the fire department of which such person is a member, from his salary or compensation if a part-paid fireman whose salary or compensation is more than Fifty Dollars (\$50) per month, but if a part-paid fireman whose salary is less than Fifty Dollars (\$50) per month, or if a volunteer fireman, the statement shall include a promise and an obligation to pay to said Board of Trustees not less than Three Dollars (\$3) nor more than Five Dollars (\$5) per annum to be paid semi-annually, the exact amount thereof to be likewise determined by vote of the fire department of which such person is a member. Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city or town. Failure or refusal to make and file the statement herein provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund. If any such member shall elect not to participate in such Fund, he shall not be liable for any salary deduction nor to pay as herein provided.

#### Contributions and Membership; Cities of Less Than 210,000

Sec. 10A. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred ten thousand (210,000), inhabitants according to the preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than six per cent (6%) from the monthly salary or compensation of each participating member fireman.

(b) The amount of the monthly deductions which shall be contributed to the Firemen's Relief and Retirement Fund shall be determined by majority vote of the Fund members.

(c) Any city coming within the provisions set out in this Article shall also contribute and appropriate monthly to the Fund an amount equal to the total sum paid into the Fund by salary deductions of the members.

(d) Money deducted from salaries or compensation as provided by this Section and the payments and contributions provided by this Section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

(e) In addition to the amount which the city is required to contribute, the governing body of a city may authorize the city to make an additional annual contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix.

(f) In the event a fireman terminates, resigns, or leaves the active full-time service of the fire department for any reason other than those for which pension benefits will accrue, and before he receives his twenty (20) year pension certificate not having completed twenty (20) years of active full-time service in the city's fire department, he shall receive an amount equal to the sum total of his monthly payments made while a participating member in the Firemen's Relief and Retirement Fund. However, no lump sum payment shall be made without prior approval by majority vote of the Board of Trustees. The adoption of a program to make lump sum payments to terminated firemen in the amount of their total monthly contributions, subject to approval by the Board of Trustees, shall be effective upon a majority vote of the participating members of the Firemen's Relief and Retirement Fund.

(g) However, a fireman who terminates his full-time service from the fire department having completed twenty (20) years of active full-time service and having received his twenty (20) year pension certificate shall make the following election:

(1) To receive an amount equal to the sum total of his monthly payments made while a participating member in the Firemen's Relief and Retirement Fund, or,

(2) To continue to make his monthly payments into the Firemen's Relief and Retirement Fund until he attains the age of fifty-five (55) years at which time he shall be entitled to receive and participate in all pension benefits which would have accrued to him as an active full-time employee.

(h) Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act; provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such per-

son who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

(i) Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment.

#### Pension Contribution Funds; Cities of Less Than 210,000

Sec. 10A-1. In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred ten thousand (210,000), according to the last preceding Federal Census, the pension contributions paid by a fireman shall not be refunded to him if the fireman is separated from the service of the fire department for any reason other than those qualifying said fireman for a pension, nor shall his beneficiary or estate receive any amount paid by him into the pension fund or any interest his contributions have accrued.

Provided further, however, a fireman who comes within the preceding paragraph may have his pension contributions refunded in a lump sum if the following provisions have been complied with:

1. A majority of the participating members have voted by secret ballot that pension contributions be refunded if a fireman leaves the service of the Fire Department prior to the time that he is entitled to retirement benefits.

2. The refund provisions if approved by a majority of the members shall apply only to those who leave the service of the Fire Department after the effective date of the election.

#### Cities of Less Than 210,000; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits

Sec. 10A-2. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred ten thousand (210,000), according to the last preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than nine per cent (9%) from the monthly salary or compensation of each participating member fireman; provided, however, that the total of the percentage contributed by such city to the Fund, plus the percentage, if any, contributed

by such city under the Federal Social Security Act, shall not exceed:

(1) nine per cent (9%) of the monthly salary, or

(2) the total percentage contributed to the retirement of other full time employees of such city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.

(b) The amount of the monthly deductions which shall be contributed to the Firemen's Relief and Retirement Fund shall be determined by majority vote of the Fund members.

(c) Any city coming within the provisions set out in this Article shall also contribute and appropriate monthly to the Fund an amount equal to the total sum paid into the Fund by salary deductions of the members subject to the limitations set out in Section 10A(a). Under no circumstances shall the city contribute an amount greater than the total sum paid into the Fund by salary deductions of members unless authorized under Section 10A(e).

(d) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

(e) In addition to the amount which the city is required to contribute, the governing body of a city may authorize the city to make an additional annual contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix.

(f) Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act, provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

(g) Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the

Fund of which he was a member immediately prior to the effective date of this amendment.

Cities of 210,000 or Less; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits

Sec. 10A-3. (a) This section applies to all cities which have a population of two hundred ten thousand (210,000) or less according to the last preceding federal census which adopt the provisions of this section by majority vote of the participating members of the fund and adopted by ordinance.

(b) A city having a Firemen's Relief and Retirement Fund shall deduct an amount equal to not less than three percent (3%) nor more than nine percent (9%) of the average monthly salary or compensation as computed in Subsection (d) of this section from each participating member's salary. The total percentage contributed by the city to the fund, plus the percentage, if any, contributed by the city under the Federal Social Security Act, shall not exceed:

(1) nine percent (9%) of the average monthly salary, or

(2) the total percentage contributed to the retirement of other full time employees of the city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.

(c) The percentage of the monthly deductions which is contributed to the Firemen's Relief and Retirement Fund as provided in this section shall be determined by majority vote of the fund members.

(d) The average monthly salary or compensation shall be computed by dividing the total gross monthly pay for all firemen for the immediately preceding twelve (12) months by the total number of firemen paid in the immediately preceding twelve (12) months. The average monthly salary shall be recalculated each year.

(e) Monthly contributions to the fund shall start on a date to be established by the board of trustees and shall continue for the following 12-month period.

(f) Any city adopting the provisions of this section shall appropriate and contribute monthly to the fund an amount equal to the total sum paid into the fund by salary deductions of the members. Under no circumstances shall the city contribute an amount greater than the total sum paid into the fund by salary deductions of members unless authorized by Subsection (h) of this section.

(g) Money deducted from salaries or compensation as provided by this section and payments and contributions of the city as provided by this section shall become a part of the Firemen's Relief and Retirement Fund of the city in which the contributing fireman serves.

(h) In addition to the amount which the city is required to contribute, the governing body of a city may authorize an annual contribution to

its Firemen's Relief and Retirement Fund in any amount it may fix.

(i) Any person who may become a fireman and is eligible for membership in the city Firemen's Relief and Retirement Fund shall become a member of that fund as a condition of his appointment, make the contributions required of members by this Act, and participate in the benefits of membership in the fund. No person is eligible for membership in the fund if he is more than thirty-five (35) years of age at the time he first enters service as a fireman or if the board of trustees of the fund determines that the person entering the service is not in sound health. The applicant shall pay the cost of any physical examination required by the board of trustees to determine eligibility.

(j) Any person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this state on the date that this section is adopted by the city shall continue as a member of that fund and retain and be allowed credit for all service to which entitled prior to the date of adoption.

**Application for Participation in Fund for Prior Service;  
Amount of Deductions; Contributions  
for Prior Service**

Sec. 10B. Any fireman who is a member of a regularly organized "full paid" fire department having a Relief and Retirement Fund and who is not participating in such fund, or who is participating but has failed to participate in such fund during some period of his service as a fireman after April 9, 1937, and who desires himself or his beneficiaries to participate in such fund or the benefits therefrom with full credit under this Act for all of such fireman's service as a fireman, shall, within sixty (60) days after this amending section of this Act takes effect, file with the Secretary-Treasurer of the Board of Firemen's Relief and Retirement Fund Trustees of such fireman's city or town a statement in writing under oath that he desires to participate in the benefits from such fund with full credit for all of his service as a fireman and giving the name and relationship of his then actual dependents, and he shall therein authorize said city or town or the governing body thereof to thenceforth deduct not less than one per centum (1%) nor more than seven and one-half per centum (7½%), the exact amount as determined or to be determined by the vote of the fire department of which such person is a member, from his salary or compensation; provided that in cities having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census the amount of the deduction to be authorized shall be not less than five per centum (5%) nor more than seven and one-half per centum (7½%) of such salary or compensation, the exact amount to be determined by the Board of Firemen's Relief and Retirement Fund Trustees; and such fireman shall, at the time of filing such statement, pay to such Fund an amount of money equal to the sum of

all contributions which such fireman did not pay but would have paid into said Fund if such fireman had participated in such Fund throughout his entire service as a fully paid fireman after April 9, 1937; provided, however, that in lieu of such full payment at the time of filing such statement such fireman may include in such statement a promise and obligation to pay to said Board of Trustees within two (2) years the full amount of such contributions for the period of such fireman's service while not participating in such Fund. If any fireman should die or retire for any reason after filing such statement and before paying the full amount of the contributions hereinabove provided, all benefits to which such fireman or his beneficiaries would have been entitled under the provisions of this section shall be withheld until the amount due from such fireman to the fund has been paid in full. When any such fireman, or any person acting for such fireman or for his beneficiaries, shall have paid to such Firemen's Relief and Retirement Fund the correct amount of his contributions for his entire period of service after April 9, 1937, such fireman and his beneficiaries shall be entitled to full credit, under the provisions of this Act, for all of his service as a fireman, and such fireman shall be deemed to have participated in such fund throughout his service as a fireman. Time of service on the "extra board" of a fire department by any person who is now a fully paid fireman entitled to the provisions of this section shall be deemed to be service as a fireman under the provisions of this section, and any fireman who has served on the "extra board" of his department shall be entitled to full credit under this Act for his time of service on such "extra board" if such fireman shall pay to such Fund the correct amount of his contributions for his period of service on such "extra board."

A fireman who is a member of a "full paid" fire department and who complies with the provisions of this section within sixty (60) days after this amending section of this Act takes effect shall be deemed to have participated in and contributed to the Firemen's Relief and Retirement Fund of the fire department for which he is employed, during any period of time after first becoming a fully paid fireman during which period such fireman served in the military forces of the United States in time of war or national emergency; and the correct amount of such fireman's contributions for such period shall be deemed to have been paid in full; provided that this paragraph shall not be applicable to any fireman who does not have full participation credit for all prior time of service and who fails, within sixty (60) days of the effective date of this section, to claim full participation credit for all prior time of service during which he did not participate in a fund.

Provided, however, that no person shall be eligible to begin participation in a Fund in the manner hereinabove provided who was more

than thirty-five (35) years of age at the time he began his service as a fireman for the first time.

Each city or town in which a Firemen's Relief and Retirement Fund has been created prior to the time at which this amending section of this Act takes effect and which has a fully paid fire department and which has a population of less than five hundred thousand (500,000) according to the preceding Federal Census, or the governing body of such city or town, shall henceforth be authorized to deduct not less than one per centum (1%) nor more than seven and one-half per centum (7½%), the exact amount thereof to be determined by the vote of the fire department of such city or town, subject to the approval of the governing body of said city or town, from the salary or compensation of each fireman who is participating in such Fund when this amending section takes effect. Each such city which has a population of five hundred thousand (500,000) or more according to the preceding Federal Census, or the governing body of such city, shall henceforth be authorized to deduct not less than five per centum (5%) nor more than seven and one-half per centum (7½%), the exact amount to be determined by the Board of Firemen's Relief and Retirement Fund Trustees of such city from the salary or compensation of each fireman who is participating in such city's Fund when this amending section takes effect.

Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves. Failure or refusal to allow deduction from salary as herein provided on the part of any fireman shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund.

Any fireman who is a member of a department which had an existing Firemen's Relief and Retirement Fund prior to the effective date of this amending Act and who has elected and does elect not to participate in such Fund, shall not be liable for any salary deduction provided by this Act; but each person who shall hereafter join a fully paid fire department which then has a Relief and Retirement Fund shall file a statement in writing, in the manner hereinabove provided by this section, upon joining such department and shall thereafter participate in the contributions to and benefits from such Fund, as provided by this Act, unless such new fireman shall be rejected or excused therefrom by the Board of Trustees upon a determination by the Board that such person is not of sound health. Boards of Firemen's Relief and Retirement Fund Trustees are hereby authorized to require complete or partial physical examinations of any person joining a fire department and filing the statement hereinabove required. The applicant shall pay

the cost of any physical examination or examinations so required. If a Board of Trustees determines that an applicant is not of sound health, such Board shall reject the filed statement of such person and shall deny such person participation in the Fund.

#### Contributions by Member of Fully Paid Fire Department

Sec. 10C. Each fireman who is a member of a fully paid fire department which has a Firemen's Relief and Retirement Fund, and who was participating in the Firemen's Relief and Retirement Fund of his city or town on July 22, 1957, shall be required to make the contributions to such Fund provided by this Act, and each such fireman shall be entitled to participate in the benefits provided by this Act.

#### City of Austin; Contributions to Fund

Sec. 10D. (a) The city of Austin, which has fully paid firemen and a Firemen's Relief and Retirement Fund created under the provisions of this Act, shall contribute and appropriate each month to such fund an amount equal to 11.85 percent of the monthly payroll excluding overtime pay and any temporary pay in higher classification of the fire department of the city, and each full time fireman shall pay into the pension fund 11.85 percent of his monthly salary excluding overtime pay and any temporary pay in higher classification. The governing body of the city may authorize the city to make an additional contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix. The firemen by a majority vote in favor of an increase in contributions above the 11.85 percent, shall increase each member's contribution above 11.85 percent in whatever amount the pension board recommends.

(b) Money deducted from salaries or compensation as provided by this Section and the payments and contributions provided by this Section shall become and form a part of the Firemen's Relief and Retirement Fund of the city in which the contributing firemen serve.

(c) Any person who enters service as a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership shall become a member of the fund as a condition of his appointment, and shall by acceptance of the appointment agree to make the contributions required by this Act of members of the fund and is eligible to participate in the benefits of membership in the fund as provided in this Act. However, no person is eligible to membership in the fund who has reached his thirtieth birthday at the time he enters service as a fireman and any person who enters service as a fireman may be denied or excused from membership in the fund if the Board of Trustees of the fund determines that he is not of sound health. The applicant shall pay the cost of any physical examination required by the Board of Trustees for this purpose.

(d) Each person who is an active member of a Firemen's Relief and Retirement Fund pre-

viously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of such fund and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this amendment.

(e) The severance benefit of a fireman who subsequently terminates his employment before he is eligible for retirement shall be an amount equal to the sum total of his monthly contributions made while a participating member of the Firemen's Relief and Retirement Fund. If the member's employment is terminated by death before retirement and he leaves no surviving beneficiary entitled to pension benefits, his estate shall receive his contributions without interest.

(f) The provisions stated herein shall apply to all active full-time members of the fire department at the time of the final passage of this Act and those persons who shall become members of the fire department at any time in the future.

(g) When, in the opinion of the Board of Trustees, there is on hand in the Firemen's Relief and Retirement Fund of any city under this Act a surplus over and above a reasonable and safe amount to take care of the current demands upon such fund, such surplus, or so much of it as in the judgment of said board is deemed safe, may be invested in federal, state, county, or municipal bonds, and in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and in such securities in which the State Permanent School Fund of Texas or the Permanent University Fund of The University of Texas may be invested under present laws, and may also invest in notes and other evidence of debt secured by mortgages insured or guaranteed by the Federal Housing Administration under the provisions of the National Housing Act, and the interest or dividends therefrom and thereon shall be deposited into such fund as a part thereof.

(h) The mayor shall appoint an investment advisory committee consisting of not less than three (3) nor more than five (5) qualified persons to be selected from the personnel of the banks of the city. Such appointees shall be experienced in the handling of such securities and investment matters and shall serve for a two (2) year term. The purpose of this committee shall be to advise and make recommendations on investment procedure and policy, and to review the investments made by the board. From such reviews and observations the committee shall make an annual report to the Board of Pension Fund Trustees of such city within ninety (90) days after the end of each calendar year.

Cities of 1,200,000 or More; Monthly Salary Deductions; Contributions and Appropriations; Membership; Service Credits; Termination of Employment

Sec. 10E. (a) All cities having fully paid firemen where Firemen's Relief and Retirement Funds have been or shall be created under the provisions of this Act and having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, the governing body of such city shall monthly deduct a sum equal to nine percent (9%) from the salary or compensation of each fireman participating in such fund.

(b) Any such city having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census shall contribute and appropriate monthly to such fund an amount equal to twice the total sum paid to such fund by salary deductions of the members, and each such city shall also contribute and appropriate monthly to such fund, for each person who holds a 20-year pension certificate and who is not engaged in active service as a fireman and who has not retired, an amount equal to twice the total sum paid into such fund by such member. Contributions and appropriations shall be made to such fund at the same time the city makes its contributions for the participating members of the fund.

(c) Money deducted from salaries or compensation as provided by this Section and the payments and contributions provided by this Section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

(d) Each person who shall hereafter become a fireman in any such city which has a Firemen's Relief and Retirement Fund in which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act; provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty (30) years of age at the time he first enters service as a fireman; and provided further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

(e) Each person who is an active member of such Firemen's Relief and Retirement Fund previously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit

for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment.

(f) If any member's employment by the city, as an employee of the fire department, is terminated for any reason other than those qualifying said employee for a pension, neither the employee nor his beneficiary or estate shall receive any amount paid by him into the pension fund or any interest his contributions may have accrued.

#### Determination of Amount of Contribution by Members

Sec. 11. Within thirty (30) days after this Act takes effect, the fire department of any city or town entitled by the provisions of this Act to participate in said Firemen's Relief and Retirement Fund shall determine by vote of the members thereof, the amount, within the limitations of this Act, of salary to be deducted in case of paid firemen, or the amount to be paid by each member thereof per annum in case of volunteer or part paid firemen whose salary is less than Fifty Dollars (\$50) per month, and the fire chief or other proper officer of such fire department shall so certify the result of said vote and determination to the Board of Firemen's Relief and Retirement Fund Trustees for that city or town, which said certificate shall be authority for the governing body of such city or town to make such deductions from salaries and apply such deductions or payments to such Fund.

#### Allowances to Beneficiaries of Deceased Members

Sec. 12. If any member of any department in any city or town having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may hereafter come within the provisions of this Act, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows:

(a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third ( $\frac{1}{3}$ ) of the average monthly salary of the deceased at the time of his retirement on allowance or death;

(b) to the guardian of each child until such child reaches the age of eighteen (18) years, the sum of Six Dollars (\$6) per month for part paid or volunteer Departments, and the sum of Twenty Dollars (\$20) per month for fully paid Departments;

(c) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Twelve Dollars (\$12) per month for each such dependent minor child for part-paid or volunteer Departments, and the sum of Forty Dollars (\$40) per month for each such dependent minor child for fully paid Departments;

(d) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees;

provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

#### Allowances to Beneficiaries of Deceased Members; Cities of 900,000 or More Population

Sec. 12A. (a) If a member of any fire department in any city having a population of nine hundred thousand (900,000) or more according to the last preceding Federal Census, which city is now within or may hereafter come within the provisions of this Act, who has been retired on allowances because of length of service or disability, shall thereafter die from any cause whatsoever or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty and such member is participating in a fund, or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if such fireman shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent or parents, said Board of Trustees shall order paid a monthly allowance which shall be based, as hereinafter provided, upon the amount which such fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death. The allowance or allowances provided hereby shall be paid as follows:

(1) If such member shall die and shall leave surviving him both a widow who married such member prior to his retirement and a child or children of such member under the age of eighteen (18) years, said Board of Trustees shall order paid to the widow of such member, a monthly pen-

sion allowance equal to one-half ( $\frac{1}{2}$ ) of said amount such member would have been entitled to receive; and in addition thereto the Board of Trustees shall order paid to such widow or other person having the care and custody of such child or children under the age of eighteen (18) years a monthly pension allowance, for the use and benefit of such child or children, equal to the amount hereinabove provided for the widow. If such member shall leave no child under the age of eighteen (18) years surviving him or if at any time after the death of such member no child is entitled to allowance, then the monthly pension allowance to be paid such widow, shall equal the full amount such member would have been entitled to receive, provided, however, that such allowance to a widow, as herein provided if no child is entitled to allowance, shall not exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary provided for the position of pipeman at the time of the death of such member.

(2) If such member shall die and if his widow dies after being entitled to her allowance as herein provided, or in the event there be no widow to receive an allowance, then the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of eighteen (18) years, to the person having the care and custody of such child or children shall be computed as follows: an amount equal to one-half ( $\frac{1}{2}$ ) of said amount such member would have been entitled to receive shall be paid for each of such member's children under the age of eighteen (18) years, provided that the total monthly pension allowance provided hereby for children shall not exceed said amount which such member would have been entitled to receive, nor shall such allowance for such children exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary provided for the position of pipeman at the time of the death of such member.

(3) If such member shall die and only if no widow or child is entitled to an allowance under the provisions of this Section, a monthly pension allowance equal to one-half ( $\frac{1}{2}$ ) of said amount such member would have been entitled to receive shall be paid to each parent of such deceased member upon proof to the Board of Trustees that such parent was dependent upon such member immediately prior to the death of such member, provided that the total monthly pension allowance provided hereby for parents shall not exceed one-half ( $\frac{1}{2}$ ) of the maximum base salary provided for the position of pipeman at the time of the death of such member.

(b) Allowance or benefits payable under the provisions of this Section for any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided, how-

ever, if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman who has been retired on allowances because of length of service or has been retired for disability after having served actively for a period of twenty (20) years or more in a regularly active fire department in a city of nine hundred thousand (900,000) or more according to the last preceding Federal Census shall in so far as the provisions of this Section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. Provided further, however, a widow covered under this Section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.

Allowances to Survivors of Deceased Members; Cities of  
240,000 to 295,000 Population

Sec. 12B. (a) If a fireman duly enrolled in any regularly active fire department in any city or town in the State having a population of not less than two hundred forty thousand (240,000) nor more than two hundred ninety-five thousand (295,000) according to the last preceding Federal Census dies before retirement, his surviving widow shall be entitled to receive a monthly pension, the amount of which shall be seventy-five per cent (75%) of the member's accrued unreduced pension as determined under Section 6C. The monthly pension payable to the widow of a member who dies while in or as a consequence of the performance of his duty shall be not less than One Hundred Dollars (\$100), and the monthly pension payable to the widow of a member who dies while not in the performance of his duty shall be not less than One Hundred Dollars (\$100). In no event shall the widow receive less than the amount she would be entitled to under Sections 6A and 12.

(b) Each child of a deceased member under the age of eighteen (18) is entitled to receive as a monthly pension Twenty Dollars (\$20) if there is a surviving widow entitled to a pension, or Forty Dollars (\$40) if not. The benefits paid to the minor children is in addition to the minimums provided for the widow, or any

accrued amount that the widow may be entitled to.

(c) Upon the death of a retired member, his surviving widow, provided she married the member prior to his retirement, is entitled to receive as a monthly pension, seventy-five per cent (75%) of the pension being paid to the member. Each child of such deceased retired member under the age of eighteen (18) is entitled to receive as a monthly pension Twenty Dollars (\$20) if there is a widow entitled to a pension or Forty Dollars (\$40) if not.

(d) If a deceased member or retired member leaves no widow or children eligible to receive a benefit hereunder but is survived by a dependent parent (or parents), such dependent parent (or one of the surviving parents designated by the Board of Trustees) is entitled to receive as a monthly pension, the amount otherwise payable to the widow.

(e) If a deceased member leaves no widow, children, or dependent parent eligible to receive a benefit hereunder, his total contributions, less any amount previously paid to him, shall be paid to his estate.

(f) Payments to a child shall be made whether or not a widow survives and shall continue after the death of a widow but shall cease upon the earliest of such child's death, marriage, or attainment of age eighteen (18). Payment to a widow or parent shall cease upon the earlier of such person's death or marriage. After all payments cease, any excess of the member's total contributions at date of death over any disability and death benefits paid shall be paid to his estate.

(g) The provisions of this section shall apply even though the death was caused while the member was gainfully employed by someone other than the respective fire department for which he was employed.

(h) Benefits hereunder shall be payable on the first day of each month commencing with the month following the one in which the member's death occurs.

(i) The Board of Trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age eighteen (18), in the absence of a determination to the contrary, are considered dependent.

(j) Upon a majority vote of the Board of Trustees, benefits to minor children may be increased to an amount not to exceed the maximum approved by an actuary.

#### Exemption of Benefits From Judicial Process

Sec. 13. No portion of said Firemen's Relief and Retirement Fund shall, either before or after its order of disbursement by said Board of Trustees to such retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any such deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to,

or detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of, or by, any Court of this State for the payment or satisfaction in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child or children, his dependent father or mother, nor shall said Fund nor any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

#### Integration of Fund With Social Security Benefits

Sec. 13A. No Firemen's Relief and Retirement Fund for fully paid firemen shall ever be integrated with benefits payable under the Federal Social Security Act, and benefits which might be available to a fireman under the Federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a Firemen's Relief and Retirement Fund for fully paid firemen.

#### Certificate to Firemen Eligible to Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a certificate, and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance and upon his death such certificate shall be prima facie proof that his widow and/or dependents shall be entitled to their respective allowances without further proof except as to her or their relationship.

#### Medical Examination of Persons Retired for Disability

Sec. 15. The Board of Trustees, in its discretion, at any time, may cause any person retired for disability, under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the Board of Trustees for the purpose, and the result of such examination and report thereof by said physician shall be considered by said Board of Trustees in determining whether the relief in said case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from said Board of Trustees, to appear and be re-examined, unless excused by said Board, fail to appear or refuse to submit to re-examination, said Board of Trustees is au-

thorized in its discretion, to reduce or entirely discontinue such relief.

**Recall for Duty in Emergency**

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city or town for payment for such duty so performed.

**Payments to Dependents on Conviction of Members**

Sec. 17. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board of Trustees shall order the allowance so granted or allowed such person discontinued, and in lieu thereof, order paid to his wife, and/or dependent child, children or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

**Appeals by Persons Aggrieved by Decision or Order of Board of Trustees**

Sec. 18. Any person possessing the qualifications herein required for retirement for length of service or disability or having a claim for temporary disability who deems himself aggrieved by the decision or order of any Board of Trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of such Board of Trustees to the Firemen's Pension Commissioner by giving written notice of intention to appeal, which said notice shall contain a statement of his intention to appeal, together with a brief statement of the grounds and reasons why he feels aggrieved and which said notice aforesaid shall be served personally upon the chairman or secretary-treasurer of said Board of Trustees within twenty (20) days after the date of such order or decision. After service of such notice, the party appealing shall file with the Firemen's Pension Commissioner a copy of such notice of intention to appeal, together with the affidavit of the party making service thereof showing how, when, and upon whom said notice was served. Within thirty (30) days after service of such notice of intention to appeal upon said Board of Trustees the secretary-treasurer thereof shall make up and file with the Firemen's Pension Commissioner a transcript of all papers and proceedings in such case before said Board and when the copy of the notice of intention to appeal aforesaid and said transcript shall have been filed with said Firemen's Pension Commissioner, said appeal shall be deemed perfected and said Firemen's Pension Commissioner shall docket said appeal, assign same a number, fix a date for hearing said appeal, and notify both appellant and the Board of Trustees of the date so fixed for hearing, at which hearing either may appear before said Commissioner if they so desire. The Firemen's Pension Commissioner may, at any time before rendering his decision

upon such appeal, require or request further or additional proof or information, either documentary or under oath. After consideration of said appeal, said Commissioner shall announce his decision in writing, giving to each party to such appeal a copy and shall direct said Board of Trustees as to the disposition of the case. A final decision or order by such Firemen's Pension Commissioner may be appealed and an appeal therefrom may be taken to the proper Court of Travis County, Texas, having jurisdiction of the subject matter, upon the serving within twenty (20) days after date of such decision or order of a notice in writing of such intention to so appeal upon the adverse party.

**Appeal to District Court**

Sec. 18A. Notwithstanding the provisions of Section 18 of this Act, any fireman in a city having a population of one million, two hundred thousand (1,200,000) or more, according to the last preceding Federal Census, possessing the qualifications herein required for retirement for length of service or disability or having a claim for temporary disability, or any of his beneficiaries, who deems himself aggrieved by the decision or order of the Board of Trustees of the city, whether because of rejection or the amount allowed, may appeal from the decision or order of the Board to a District Court in the county where the Board is located by giving written notice of the intention to appeal. The notice shall contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally upon the chairman or secretary-treasurer of the Board within twenty (20) days after the date of the order or decision. After service of the notice, the party appealing shall file with the District Court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and upon whom the notice was served. Within thirty (30) days after service of the notice of intention to appeal upon the Board the secretary-treasurer of the Board shall make up and file with the District Court a transcript of all papers and proceedings in the case before the Board and when the copy of the notice of intention to appeal and the transcript shall have been filed with the Court, the appeal shall be deemed perfected and the Court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the Board of the date fixed for the hearing. At any time before rendering its decision on the appeal, the Court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on the appeal, the Court shall give to each party to the appeal a copy of the decision and shall direct the Board as to the disposition of the case. The final decision or order of the District Court is appealable in the same manner as are civil cases generally.

## Firemen's Pension Commissioner

Sec. 19. For the purposes of co-ordinating the reports of the various Boards of Firemen's Relief and Retirement Fund Trustees; to provide examination from time to time of the accounts of such Boards; to determine and certify to the State Treasurer such Boards as shall, under provisions of this Act, qualify for and be entitled to consecutive apportionment from said Firemen's Relief and Retirement Fund and to hear, determine, and review appeals from the decision or order of any of such Boards of Trustees, there is hereby created the office of Firemen's Pension Commissioner, whose office shall be located in the City of Austin, Texas, to be appointed biennially by the Governor from a list of not less than three (3) nor more than ten (10) nominees submitted by the State Firemen's and Fire Marshal's Association of Texas. Such Commissioner shall be appointed for a term of two (2) years beginning July 1, 1937, and shall receive an annual salary of Three Thousand, Six Hundred Dollars (\$3,600) payable in monthly installments of Three Hundred Dollars (\$300) per month, together with the necessary office expenses, postage, stationery, office fixtures, and supplies, not to exceed the sum of Fifteen Hundred Dollars (\$1500) annually, together with his actual traveling expenses when necessary, to be paid by voucher of the State Treasurer from said Firemen's Relief and Retirement Fund. Such Commissioner shall have authority to examine the accounts and records of the various Boards of Trustees; shall make rules and regulations not otherwise provided herein, and prepare forms for use by the various Boards of Trustees in order to assist in the work and duties thereof; shall classify and co-ordinate the reports of the various Boards of Trustees and shall issue his certificate to the State Treasurer, not later than April 1st of each year, certifying such Boards of Trustees as shall, in his opinion, have complied with the provisions of the Act thereby becoming entitled to apportionment from said Funds for the coming current year, shall examine and approve or disapprove any and all applications of the Boards of Trustees for additional apportionment from the emergency reserve of said Fund as herein provided; shall hear, determine, and/or review all appeals herein provided and shall do any and all things within his power and as he may deem necessary to facilitate and assist in the purpose for which such Firemen's Relief and Retirement Fund is created.

## Application by Board of Trustees for Additional Temporary Apportionment

Sec. 20. Whenever any Board of Trustees shall find the fund as herein provided and within their control insufficient to meet the demands against such funds, such Board of Trustees may make written application to the Firemen's Pension Commissioner for additional temporary apportionment from the emergency reserve of such Fund, such application by the sworn statement of at least three (3) members

of such Board of Trustees showing that the department applying for such temporary apportionment has assessed its members the maximum assessment provided hereunder and showing further the necessity and reasons for such additional temporary apportionment and if approved by the Firemen's Pension Commissioner, he shall certify his approval to the State Treasurer and shall order the amount to be allowed on such application within the following limits, to wit: to Boards in cities or towns having a population of ten thousand (10,000) or less, not to exceed the sum of One Thousand Dollars (\$1,000) annually; to Boards in cities or towns having a population of more than ten thousand (10,000) but less than twenty-five thousand (25,000), not to exceed the sum of One Thousand, Five Hundred Dollars (\$1,500) annually; to Boards in cities or towns having a population of twenty-five thousand (25,000) or more, but less than fifty thousand (50,000), not to exceed the sum of Two Thousand Dollars (\$2,000) annually; to Boards in cities or towns having a population of fifty thousand (50,000) or more, but less than one hundred thousand (100,000), not to exceed the sum of Two Thousand, Five Hundred Dollars (\$2,500) annually; to Boards in cities or towns having a population of one hundred thousand (100,000) or more, but less than one hundred and fifty thousand (150,000), not to exceed the sum of Three Thousand, Two Hundred and Fifty Dollars (\$3,250) annually; to Boards in cities or towns having a population of one hundred and fifty thousand (150,000) or more, but less than two hundred thousand (200,000), not to exceed the sum of Four Thousand Dollars (\$4,000) annually; and to Boards in cities or towns having a population of two hundred thousand (200,000) or more, not to exceed the sum of Five Thousand Dollars (\$5,000) annually. Upon such certificate of approval of such application by the Firemen's Pension Commissioner, the State Treasurer shall pay to such applicant Board the sum stated in such certificate from the emergency reserve of said Firemen's Relief and Retirement Fund and in addition to the amount to be paid such Board under the regular apportionment as herein provided due such Board.

## Computation of Length of Service

Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one (1) year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one (1) year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement

time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall be entitled to benefits hereunder after he has filed a statement that he desires to participate in the benefits from the Firemen's Relief and Retirement Fund, as provided in Section 10 or Section 10B of this Act, but he shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

**City Attorney to Represent Board of Trustees in Appeals**

Sec. 22. It shall be and is hereby made the duty of the City Attorney, without additional compensation, to appear for and represent the Board of Trustees of that city or town in all cases of appeal to the Firemen's Pension Commissioner by any claimant from the order or decision of such Board of Trustees.

**Investment of Surplus**

Sec. 23. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city or town, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and in shares or share accounts of building and loan associations organized under the laws of this State, or Federal Savings and Loan Associations domiciled in this State, where such shares and share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and the interest or dividends therefrom and thereon shall be deposited into said Fund as a part thereof, and in bonds issued, assumed, or guaranteed by certain international financial institutions in which the United States is a member, to wit: the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank.

**Investment of Surplus; Cities of Less Than 210,000**

Sec. 23A. (a) This section applies to the Firemen's Relief and Retirement Fund in any city having a population of less than two hundred ten thousand (210,000), according to the last preceding Federal Census.

(b) Whenever, in the opinion of the Board of Trustees, there is on hand in the Firemen's Relief and Retirement Fund a surplus over and above a reasonably safe amount to take care of current demands upon such fund, such surplus, or so much thereof as in the judgment of the Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal

Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred stocks and common stocks as the Board may deem to be proper investments for the fund.

(c) In making each and all of such investments the Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

(d) No more than fifty percent (50%) of the fund shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of the fund be invested in corporate bonds and stocks issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned.

(e) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.

**Investment of Surplus; Cities of 900,000 or More Population**

Sec. 23A-1. (a) This Section is applicable to the Firemen's Relief and Retirement Fund in any city having a population of nine hundred thousand (900,000) or more according to the last preceding Federal Census.

(b) Whenever, in the opinion of the Board of Trustees, there is on hand in the Firemen's Relief and Retirement Fund a surplus over and above a reasonably safe amount to take care of current demands upon such fund, such surplus, or so much thereof as in the judgment of the Board is deemed proper, may be invested in bonds of other interest bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time and in such corporation bonds, preferred stocks and common stocks as the Board may deem to be proper investments for the fund.

(c) In making each and all of such investments the Board shall exercise the judgment

and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

(d) Not more than four percent (4%) of the fund shall be invested in corporate securities issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned.

(e) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for five (5) consecutive years or longer, immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.

#### Investment Counseling Service

Sec. 23B. The Board of Trustees of a full paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

#### Employment of Actuary; Cities of 800,000 or More

Sec. 23C. In cities having a population of eight hundred thousand (800,000) or more according to the last preceding Federal Census, and only in such cities, the Board of Trustees of a Firemen's Relief and Retirement Fund coming under the provisions of this Act may employ an actuary no more than once every three (3) years and pay his compensation out of the pension fund.

#### Employment of Actuary; Cities of 800,000 or Less

Sec. 23D. In cities having a population of eight hundred thousand (800,000) or less according to the last preceding Federal Census, and only in such cities, the Board of Trustees of a Firemen's Relief and Retirement Fund coming under the provisions of this Act may employ an actuary no more than once every three (3) years and pay his compensation out of the Pension Fund.

#### Employment of Certified Public Accountants; Audits

Sec. 23E. The Board of Trustees of a full paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the Firemen's Relief and Retirement Fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such au-

dit; if not paid by the city, the cost may be paid from the assets of the Fund.

#### Cities of 1,200,000 or More; Employment of Attorney

Sec. 23F. In cities having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, and only in such cities, the Board of Trustees of the Firemen's Relief and Retirement Fund may employ an attorney to render a legal opinion or to represent the trustees in any litigation involving matters coming under this Act.

#### Cities of 1,200,000 or More; Employment of Physician(s)

Sec. 23G. In cities having a population of one million, two hundred thousand (1,200,000) or more according to the last preceding Federal Census, and only in such cities, the Board of Trustees of the Firemen's Relief and Retirement Fund may employ a physician or physicians to examine firemen prior to their becoming a member of the fund or to examine a fireman applying for a disability pension allowance.

#### Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The Board of Trustees of any city or town as herein created and constituted shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any moneys paid out or obtained from said Fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain such action in the name of said Board of Trustees for the use and benefit of such Fund.

#### Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proratably reduced for such time as such deficiency exists.

#### Termination of Active Service; Allowances and Benefits

Sec. 25A. After a fireman who is a member of a "full paid" fire department at the termination of his active service shall terminate his active service, the amounts of all allowances and benefits which such fireman or his beneficiaries may thereafter become entitled to receive from a Firemen's Relief and Retirement Fund shall be computed on the basis of the schedule of allowances and benefits in effect for such Firemen's Relief and Retirement Fund at the time of the termination of such fireman's active service.

#### Definitions

Sec. 26. Whenever used herein, the term "Board" or "Board of Trustees" shall be deemed to mean and refer to the Board of Firemen's Relief and Retirement Fund Trustees.

Whenever used herein, the term "firemen" or "fireman" shall be deemed to mean and include

all active members of any regularly organized fire department of any incorporated city or town of this State, having fire fighting equipment or apparatus of the minimum value of One Thousand Dollars (\$1,000) or more whether wholly paid, partly paid and partly volunteer, or wholly volunteer. All other members shall be deemed honorary or inactive members and as such shall not be entitled to any of the benefits provided by this Act.

Whenever used herein, the term "active firemen," "active fireman," or "active members" shall be deemed to mean and include all paid firemen who receive regular salaries as firemen and such partly paid or volunteer firemen as in each calendar year answer at least twenty-five (25) per cent of all fire alarms and at least forty (40) per cent of all drill or practice calls.

#### Partial Invalidity

Sec. 27. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

#### Application and Operation of Act

Sec. 27A. This Act shall not apply to any city which has heretofore established and maintains a joint police and municipal employees pension and retirement system or a joint police, firemen's and fire alarm operator's Pension and Retirement System, provided however, that nothing in this Section 27A shall be construed so as to affect in any way any city or fire department which has a Firemen's Relief and Retirement Fund at or prior to the effective date of this amending Section; and this Section 27A shall not affect in any way any Firemen's Relief and Retirement Fund system which is in existence prior to the effective date of this amending Section.

#### Provisions Cumulative of Other Acts

Sec. 28. The provisions hereof shall be cumulative of and in addition to all other laws and particularly Articles 6229 to 6243 inclusive and all Acts amendatory thereof, which are hereby preserved and continued in force and effect.

[Acts 1937, 45th Leg., p. 229, ch. 125; Acts 1945, 49th Leg., p. 58, ch. 40, § 1; Acts 1947, 50th Leg., p. 353, ch. 201, § 1; Acts 1949, 51st Leg., p. 675, ch. 348, § 1; Acts 1953, 53rd Leg., p. 352, ch. 82, §§ 1 to 3; Acts 1955, 54th Leg., p. 461, ch. 127, §§ 1 to 3; Acts 1955, 54th Leg., p. 904, ch. 355, § 1; Acts 1957, 55th Leg., p. 617, ch. 275, §§ 1 to 17A; Acts 1959, 56th Leg., p. 810, ch. 367, § 1; Acts 1961, 57th Leg., 1st C.S., p. 191, ch. 53, § 1; Acts 1963, 58th Leg., p. 25, ch. 19, § 1; Acts 1963, 58th Leg., p. 79, ch. 50, §§ 1 to 4, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 463, ch. 164, §§ 1 to 3; Acts 1965, 59th Leg., p. 20, ch. 10, §§ 1 to 4, eff. March 1, 1965; Acts 1965, 59th Leg., p. 55, ch. 20, §§ 1 to 6, eff. March 16, 1965; Acts 1965, 59th Leg., p. 328, ch. 153, § 1, eff. May 13, 1965; Acts 1967, 60th Leg., p. 81, ch. 42, §§ 1 to 3, eff. April 7, 1967; Acts 1967, 60th Leg., p. 348, ch. 167, §§ 1 to 5, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 230, ch. 92, §§ 1 to 6, eff. April 25, 1969; Acts 1969, 61st Leg., p. 501,

ch. 167, § 1, eff. May 9, 1969; Acts 1969, 61st Leg., p. 508, ch. 174, §§ 1 to 5, eff. May 9, 1969; Acts 1969, 61st Leg., p. 612, ch. 208, § 1, eff. May 14, 1969; Acts 1969, 61st Leg., p. 1986, ch. 676, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2281, ch. 768, § 1, eff. June 14, 1969; Acts 1971, 62nd Leg., p. 63, ch. 33, §§ 1 to 5, eff. March 22, 1971; Acts 1971, 62nd Leg., p. 715, ch. 77, § 1, eff. April 26, 1971; Acts 1971, 62nd Leg., p. 851, ch. 101, §§ 1 to 7, eff. April 29, 1971; Acts 1971, 62nd Leg., p. 867, ch. 107, § 1 to 4, eff. May 4, 1971; Acts 1971, 62nd Leg., p. 1406, ch. 385, §§ 1, 2, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1670, ch. 472, § 4, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1957, ch. 598, § 1, eff. June 2, 1971; Acts 1973, 63rd Leg., p. 12, ch. 10, §§ 1, 2, eff. March 13, 1973; Acts 1973, 63rd Leg., p. 794, ch. 355, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 1296, ch. 486, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1746, ch. 634, §§ 1, 2, eff. Aug. 27, 1973.]

Section 18 of the amendatory Act of 1957 provided that "This amending Act shall not diminish the rights of any person who became entitled to a pension allowance from any Firemen's Relief and Retirement Fund prior to the effective date of this amending Act."

Acts 1963, 58th Leg., p. 79, ch. 50, § 5, was a severability provision. Section 6 of the Act provided: "This Act does not apply to litigation pending as of the effective date of this Act."

Acts 1965, 59th Leg., p. 20, ch. 10, provided in § 6 that the Act does not apply to litigation pending as of its effective date.

Act 1971, 62nd Leg., p. 63, ch. 33, § 6, provided: "As used in this Act, the last preceding Federal Census means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1971, 62nd Leg., p. 715, ch. 77, adding § 18A, in § 2 provided: "As used in this Act, the last preceding Federal Census means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

Acts 1971, 62nd Leg., p. 851, ch. 101, which by sections 1 to 7 amended §§ 3B(a), 6D(a), 7A(d), 10A(a), 10A-1, 10A-2(a) and 23A(a) of this article, respectively, in § 8 provided: "This Act takes effect on the date that the State and all political subdivisions and agencies are required by State law (Chapter 447, Acts of the 58th Legislature, 1963, codified as Article 29d, Vernon's Texas Civil Statutes) to recognize and act upon the 1970 census population reports or counts for cities as released by the Director of the Bureau of the Census."

Acts 1971, 62nd Leg., p. 867, ch. 107, which by sections 1 to 4 amended §§ 6B, 7B, 7C and 10E(a)(b) of this article, respectively, in § 5 provided: "As used in this Act, the last preceding Federal Census means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1971, 62nd Leg., p. 1406, ch. 385, which by sections 1 and 2 added §§ 6C-1 and 6C-2 to this article respectively, provided in § 3: "As used in this Act, the last preceding Federal Census means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1973, 63rd Leg., p. 1296, ch. 486, § 1, amended § 7F "as last amended by Section 3, Chapter 174, Acts of the 61st Legislature, Regular Session, 1969, and Section 1, Chapter 768, Acts of the 61st Legislature, Regular Session, 1969".

Acts 1973, 63rd Leg., p. 1746, ch. 634, which by sections 1 and 2 added §§ 6B-1, 23F, 23G and amended § 10E(b), provided in § 3: "If any provision or provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, or applications, of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 6243e-1. Repealed by Acts 1949, 51st Leg., p. 371, ch. 195, § 1

**Art. 6243e-2. Firemen's Pensions in Cities of 350,000 to 400,000**

Any city having a population of three hundred fifty thousand (350,000) or more, but less than four hundred thousand (400,000) according to the last preceding Federal Census and having a full time regularly organized fire department and having an established municipal employees retirement plan shall be authorized to provide for the retirement of its firemen by appropriate ordinance under the terms and provisions of such employees retirement plan if the benefits provided by such employees retirement plan are substantially as advantageous as the benefits provided by Chapter 125, Acts of the 45th Legislature, as amended (Article 6243e, Vernon's Civil Statutes of the State of Texas).

Upon adoption of an appropriate ordinance, all of the assets of the Firemen's Relief and Retirement Fund shall be transferred to the Municipal Employees' Retirement Fund and thereafter those persons serving as active firemen duly enrolled or contributing to the fund shall be subject to all provisions of such Municipal Employees' Retirement Fund and the Municipal Employees' Retirement Fund of such city shall assume all liabilities and obligations of the Firemen's Relief and Retirement Fund at the date of transfer. Thereafter such Municipal Employees' Retirement Fund as combined shall not be subject to the provisions of Chapter 125, Acts of the 45th Legislature, as amended (Article 6243e, Vernon's Civil Statutes of the State of Texas).

Provided, however, nothing contained in this Act shall be held or construed to affect or impair any act done or right vested or accrued under Article 6243e, V.A.C.S., pending in any proceeding, suit, or prosecution had or commenced in any cause thereunder, be it before the courts, the Firemen's Pension Commissioner, or the Board of Firemen's Relief and Retirement Fund Trustees; but every act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents as if Article 6243e, V.A.C.S., were applicable thereto and any and all liabilities existing under this proviso, be they vested, accrued or contingent, shall be the obligations of the Municipal Employees' Retirement Fund.

[Acts 1963, 58th Leg., p. 54, ch. 36, § 1, eff. April 1, 1963.]

**Art. 6243e-3. Firemen's Death and Disability Benefits; Heart or Lung Disease**

Sec. 1. The Board of Trustees of any firemen's pension fund in any incorporated city or town in this State may, upon fulfilling requirements hereinafter stated, establish benefit eligibility for a fulltime employee who has been employed for as long as six (6) years, and thereafter becomes disabled or dies from heart or lung disease, based on a presumption that such death or disease was a consequence of his duties as a fireman, if the fireman shall have

successfully passed a physical examination prior to the claimed disability or death, or upon entering upon his employment as a fireman, and the examination failed to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

Sec. 2. Before any such Board shall adopt as part of its plan for retirement benefits the presumption, together with qualifications, set forth in Section 1 hereof, it shall take the following preliminary step(s):

(a) Obtain an actuarial study showing how the proposed change in benefit eligibility standards will affect the financial condition of the fund.

(b) In the event that such actuarial study shows that inclusion of the proposed change in benefit eligibility standards will not make the fund financially unsound, then said Board shall, within thirty days after receipt of such actuarial study, hold an election in which the active participants contributing to the fund shall vote on the question of whether such benefit eligibility standard should be instituted, said Board being bound by the results of such election.

[Acts 1971, 62nd Leg., p. 2392, ch. 747, eff. Aug. 30, 1971.]

**Art. 6243f. Firemen and Policemen's Pension Fund in Cities of 500,000 to 750,000**

**Board of Trustees**

Sec. 1. In all incorporated cities containing more than five hundred thousand (500,000) inhabitants and less than seven hundred and fifty thousand (750,000) inhabitants according to the last preceding federal census or any future federal census and having a fully paid fire and police department, there is created hereby (and continued if heretofore created) a Firemen and Policemen's Pension Fund; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any such member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. To govern said Firemen and Policemen's Pension Fund, there is hereby created a Board of Trustees to consist of seven (7) members, as follows: the mayor, two (2) aldermen, councilmen or commissioners, each to serve on this Board for the term of office to which they are elected, and to be elected to this Board by majority vote of the Board of Aldermen, Council or Board of Commissioners on which they serve; two (2) active firemen below the rank of fire chief, to be selected by the majority vote of the members of the fire department by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years, and two (2) active policemen below

the grade of police chief, to be selected by the majority vote of the members of the police department, by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years. All members from the fire and police departments shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified and their successors shall be elected for a term of four (4) years. These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. Said Board shall be known as the Firemen and Policemen's Pension Fund Board of Trustees of \_\_\_\_\_, Texas.

#### Powers and Duties of Board

Sec. 2. The board shall organize by choosing one (1) member as chairman and one (1) member as secretary, which board shall control and administer the fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such city, the condition of the Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of the Fund, and the amounts paid them. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

#### Membership

Sec. 3. Repealed by Acts 1959, 56th Leg., p. 799, ch. 363, § 3.

#### Contributions to Fund, Deductions From Wages

Sec. 4. There shall be deducted for such Fund from the wages of each fireman and policeman in the employment of such city a sum equal to five per cent (5%) of the total salary excluding overtime pay. Such city shall pay into said Fund, and at the same time, a matching amount equal to the sum total of all such deductions. Provided, however, the board of trustees can raise the amount of deductions not to exceed seven and one-half percent (7½%) of the total salary excluding overtime pay of each member, of said departments, the additional contribution of the city to be likewise increased at the same time to the same amount. Any donations made to said Fund and all funds received from any source for such Fund shall be deposited in like manner in such Fund. The city's matching amount referred to above shall be in addition to the net revenues from the parking meter monies referred to in Section 16 of this Act to the extent such revenue shall equal in amount the amount of the net revenues therefrom for the calendar year 1958, but such city shall receive credit on such matching amount for each calendar year to the extent such net proceeds shall exceed in amount the amount of the net

proceeds from such meters for the calendar year 1958, if it should exceed such amount in any such calendar year. In the event such parking meter revenues for any calendar year is less than the 1958 amount of such parking meter revenues, it is expressly understood that such sum of revenues shall accrue to the Fund in addition to the matching amount contributed by the city mentioned in this Act, to the full extent necessary, such matching amount shall be paid out of the General Fund, and such city shall make provisions therefor. Beginning August 1, 1963, such city shall, over and above all of the foregoing contributions, contribute an additional sum of Thirty Thousand Dollars (\$30,000) each month to the Fund, and increase said monthly sum by Five Thousand Dollars (\$5,000) per month for the fiscal year beginning August 1, 1964, and increasing said sum at the rate of Five Thousand Dollars (\$5,000) per month per year for each fiscal year thereafter until such additional contribution by the city shall reach a level of Forty-five Thousand Dollars (\$45,000) per month, whereupon said city shall continue to contribute the said sum of Forty-five Thousand Dollars (\$45,000) per month each and every month thereafter until such time as the Board notifies the city that the Fund is actuarially sound. It shall be the duty of the Board to notify the city immediately, when, by periodic actuarial surveys of the actuarial soundness of the Fund, the Fund becomes actuarially sound. Department chiefs shall contribute on the basis of the salary of their permanent civil service rank plus their individual longevity pay and upon death or retirement their pensions shall be computed on the same basis.

#### Meetings; Disbursements; Records

Sec. 5. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman, or written demand of a majority of the members. It shall issue orders signed by the Chairman and Secretary to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by the said Board, which order shall state for what purposes such payments are to be made. It shall keep a record of the proceedings which record shall be of public record; it shall at each monthly meeting send to the City Treasurer a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Record of the Firemen and Policemen's Pension Fund, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "No" and "Yes" vote entered upon the proceedings of the Board.

## Custody of Fund

Sec. 6. The Treasurer of said City shall be Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such City Treasurer, but he shall receive no compensation therefor.

## Who May Share In Fund

Sec. 7. (a) Any person who has been duly appointed and enrolled in the Fire Department or Police Department of any city having the number of inhabitants provided for in Section 1, as amended, to a position or office expressly established and classified as a position or office in either of said departments by Ordinance of the City Council or other governing body of such city, and who, after such due appointment and enrollment has served the probationary period in such position or office, if any, shall automatically become a member of the Pension Fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age. In all instances where a person is already a member of and contributor to such Pension Fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the Pension Fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a Fireman or Policeman of such city in a position or office expressly established and classified as a position or office in either of said departments by ordinance of the city council or other governing body of such city, and who, after such due appointment and enrollment serves the probationary period in such position or office, if any, shall automatically, after six (6) months of service, become a member of the Pension System as a condition of his employment, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age.

(c) Members of this Pension Fund who are called to active military service shall not be required to make the monthly payments into the Fund provided for in this Act as long as they are thus engaged in active military service, nor shall they lose any seniority rights or retirement benefits provided for in the Act by virtue of such military service, provided that after their reinstatement to an active status in either the Fire or Police Department they must file a written statement of intent with the Secretary of the Pension Board within ninety (90) days of their return to such active status to pay into the Pension Fund an amount equal to what they would have paid in

if they had remained on active status in the Department during the period of their absence in military service and make such payment in full within an amount of time after their return equal to the time they were absent, in each case, or forever lose all credit toward a retirement pension for the length of time such member was engaged in active military service. No disability resulting from either injury or disease contracted after the effective date of this Act while engaged in military service shall ever entitle a member of the Fund to a disability pension.

(d) For the purposes of this Act, the regularity of an appointment shall not be presumed from the serving of the full probationary period, if any. And the service by an officer or employee of the probationary period in the Fire Department or Police Department shall not constitute the creation of a position or office to which a regular or a due appointment may be made under this Act. And the drawing of compensation by an officer or employee in the Fire Department or Police Department for his service therein shall not of itself make such a person a member of said Pension Fund.

## Retirement Pension

Sec. 8. (a) Whenever any member of said Departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) or thirty (30) years in either of said Departments, the Board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant based on the average of the member's total salary excluding overtime pay for the highest five (5) years of such member's pay at the rate of two percent (2%) thereof for each full year served as such contributing member through the first thirty (30) years of such service. No member shall ever receive any award from this Fund for retirement until he has served at least twenty (20) years in either or all of the Departments and has also contributed the required amount of money for at least twenty (20) years. In determining the number of years service in a department, the member shall be given full credit for such time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act. Disciplinary suspensions of fifteen (15) days, or less, shall not be subtracted from a member's service time credit under this Act toward a retirement pension, provided that the member shall pay into the Fund within thirty (30) days after the termination date of each suspension a sum of money equal to the amount of money which would have been deducted from his salary during that

period of suspension if it had not been for that suspension.

(b) From and after January 1, 1959, whenever any member of said Departments shall have served for a period of thirty (30) years in either of said Departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of sixty-five (65) years; failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

Provided, however, when a member in said departments attains the age of sixty-five (65) years without having served for a period of thirty (30) years in either of said Departments and without having contributed a portion of his salary as provided by this Act for a period of thirty (30) years, he may continue his service until his period of service and period of Pension Fund contributions shall cover thirty (30) years.

**Cessation of Membership in Department; Eligibility for Retirement Benefits; Conditions**

Sec. 9. When any member of said Departments has qualified for a retirement pension as provided in Section 8(a) hereof, but has subsequently ceased to be a member or a duly enrolled member of said Departments, by whatever means or for whatever reason, he shall nevertheless be entitled to such retirement benefits of the Fund as had accrued to him before the time he ceased to be a member or duly enrolled member of said Departments, provided, however, that: (a) application for such retirement pension must be filed with the Board by such former member (or his beneficiary or beneficiaries in the event of his prior death) within one (1) year from the date he ceases to be a member or duly enrolled member of said Departments; (b) such retirement pension shall begin as of the first full calendar month after the month in which such application is filed; and (c) the amount of such pension shall be that established as of the date he ceased to be a member or a duly enrolled member of said Departments, or as of the date he files such application, whichever is the lesser; provided further, that this section shall never be construed to entitle a former member to a pension hereunder who has lost his pension rights because of failure to retire at age sixty-five (65), (or upon attaining thirty years' service past age sixty-five (65)), under the provisions of Section 8(b) hereof.

**Retirement When Disabled**

Sec. 10. When any duly appointed and enrolled member of the Fire Department or Police Department of the city who is contributing to said Fund, as herein provided, shall become so permanently disabled through injury or disease so as to incapacitate him from the performance of his duties, and shall make written

application subject to medical examination for such injury or disease, he shall be retired from the service, if a member in good standing of said Department at the time of retirement, and be entitled to receive from the said fund one-half ( $\frac{1}{2}$ ) of the average of his total salary excluding overtime pay based on his five (5) highest paid years of service, or if he has served less than five (5) years, a theoretical average based on all of his years of service extended back to a date five (5) years before the date of retirement under this Act, using (for the extended period) the actual base pay of a private as of that period of time, in each case, in making the computation. In no case shall a disability claim for incapacity from fire or police duties be received or considered, nor an award made hereunder until disability therefrom has first been proved to be continuous and wholly incapacitating for a period of not less than thirty (30) days. The amount of one-half ( $\frac{1}{2}$ ) of the average total salary excluding overtime pay as set out above is the maximum amount of disability pension for total and permanent disability. Disability resulting from injury or disease incurred after the effective date of this Act while engaged in the active military service shall not entitle a member of this Fund to a disability pension. However, total and permanent disability resulting from injury or disease incurred while a member is on suspension shall, if the suspended member makes up all deducted contributions lost by reason of the suspension within thirty (30) days of the date that they would otherwise have been deducted from his pay, entitle a member of this Fund to a disability pension, except in the case of an indefinite suspension. In the latter case action on an application for a disability pension shall await a final determination of any and all appeals. If the member is finally discharged he shall not be entitled to a disability pension and his application shall be dismissed. If the member is restored to duty, or given a suspension for a specific period of time, his application shall be heard and acted on in the same manner as any other application. These provisions shall not affect the right conferred by Section 9 of this Act.

**Death Benefits to Widows and Children**

Sec. 11. In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said Fund, and a member in good standing of said Fund, leaving a widow, child or children under the age of seventeen (17) years, or an unmarried child or unmarried children seventeen (17) years of age or over but under nineteen (19) years of age currently attending a public or private educational institution, the widow and such child or children shall be entitled to receive from the said Fund an amount not to exceed one-half ( $\frac{1}{2}$ ) of the average total salary excluding overtime pay of the deceased member based on his five (5) highest paid years of service, or a theoretical

average based on all of his years of service extended back to a date five (5) years before the date of his death, using (for the extended period) the actual base pay of a private as of that period in time, in each case, in making the computation; one-half ( $\frac{1}{2}$ ) of the widow's amount in the aggregate shall go to the eligible children and one-half ( $\frac{1}{2}$ ) for the widow. No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half ( $\frac{1}{2}$ ) of the average total salary excluding overtime pay of the deceased member computed as provided above if he has served less than five (5) years. In case there is no widow, the children shall receive one-fourth ( $\frac{1}{4}$ ) of the average total salary computed as provided above, except that if the Board determines upon investigation that the eligible child or children is or are destitute then the Board may increase the pension to an amount not exceeding two-fifths ( $\frac{2}{5}$ ths) of that average total salary. The amount awarded hereunder to any child or children shall be paid by the Board of Trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half ( $\frac{1}{2}$ ) of the average total salary excluding overtime pay of the deceased member computed as provided above, and in the event of the death of a member who retired upon twenty (20) years service and less than twenty-five (25) years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths ( $\frac{2}{5}$ ths) of that average total salary computed as provided above. A child or children alone in such case shall receive only one-fifth ( $\frac{1}{5}$ ) of that average total salary as computed above. A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under seventeen (17) years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid. Provided, however, that in no other instance under this Act shall any child be entitled to any benefit after becoming nineteen (19) years of age. On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow whose status as such resulted from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. The pension rights of qualified widows, children, and dependent parents of deceased members or pensioners who retired or died before the effective date of the 1971 amendment hereto shall be computed on the basis of the base pay of a private in the department as of the date of such retirement or death. In the event of the death of a member

who is under suspension at the time, including an indefinite suspension which has not yet become final, his widow and children shall enjoy the same rights as any other member hereunder. All widows, or other dependent beneficiaries under this Act, or guardians thereof, may be required by the Board to file an affidavit annually as to their marital status, or that of their wards, or to give an affidavit to the Board at other times when probable cause to suspect the possibility of remarriage exists. In the event of the failure or refusal of such widow or other beneficiary or guardian to file such affidavit, or in the event they should file an incomplete, incorrect, or false affidavit, the Board may suspend pension payments to such widow, other beneficiary, or guardian indefinitely, and until there has been full compliance with the requests and orders of the Board. This provision shall not be construed to be a limitation on or in derogation of any other powers, specific or implied, of the Board as set out in Sections 2, 10, 13, and 14 of the Act, or elsewhere herein.

**Death Benefits to Children Under 17; Remarriage of Widow; Marriage After Retirement**

Sec. 12. Repealed by Acts 1959, 56th Leg., p. 803, ch. 363, § 11.

**Death Benefits to Dependent Father and/or Mother; Investigations**

Sec. 13. If any member of the Fire or Police Department dies before or after retirement, who was a contributor to said Fund and a member in good standing thereof, and leaves no widow or child, but leaves surviving him a father and/or mother wholly dependent upon him for support, such dependent father and/or mother shall be entitled to receive one-third ( $\frac{1}{3}$ rd) of the average total salary excluding overtime pay of the deceased member based on his five (5) highest paid years of service, or a theoretical average based on all of his years of service extended back to a date five (5) years before the date of death under this Act using (for the extended period) the actual base pay of a private as of such period in time, in each case, in making such computation, to be equally divided between said father and mother, so long as they are wholly dependent. When there is only one (1) dependent, either father or mother, the Board shall grant the surviving dependent one-fourth ( $\frac{1}{4}$ th) of that average total salary as computed above. The Board shall have the authority to make a thorough investigation, determine the facts as to the dependency of the said parties, and each of them, as to how long the same exists and may at any time, upon the request of any beneficiary or any contributor to such Fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the findings of any Board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the Trustees shall have been set aside or revoked by a court of competent juris-

diction. The Board shall have the power to make any such investigation into any pension application whatsoever or any pensioner's status on its own initiative. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his dependent parents shall enjoy the same rights as any other member under this Act. If any member of the Fire and Police Department in active service should die, leaving neither a widow, a child or children, under seventeen (17) years of age, a child under nineteen (19) years of age who is attending school, or a retarded child, or dependent father and mother, or one such, the estate of said deceased member of the Fire or Police Department shall be entitled to a burial death benefit payment in the amount of One Thousand Dollars (\$1,000.00) from said Fund. This benefit shall never be paid if the member of the Fund dying is survived by one or more beneficiaries as defined hereunder.

#### Applications; Hearing

Sec. 14. The Board shall consider all cases for membership in the Fund and retirement and pensioning of the members of the Fire and Police Departments rendered necessary or expedient under the provisions of this Act, and all applications of pensions by widows, the children and dependent parents, and the said Trustees shall give notice to persons asking for membership in said Fund or for a pension to appear before the Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor of the said Fund, and a member thereof in good standing, may appear either in person, or by attorney, and contest the application for membership participation in said Fund or for a pension or benefits by any person claiming to be entitled to participate therein, either as a member or beneficiary, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witnesses in any manner affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served upon any member of the Fire or Police Departments and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify as in any judicial proceedings; according to practice in a Justice Court.

#### Medical Examination; Prior Service Credit

Sec. 15. (a) Said Board may cause any person receiving any disability pension under the provisions of this Act, to appear and undergo medical examination or medical examinations by any reputable physician or physicians selected by the Board, as a result of which the Board shall determine whether the relief in said case shall be continued, decreased, or restored to the original amount (if it had been decreased), or discontinued; provided, how-

ever, that such relief shall never be discontinued unless the person receiving any pension shall have first been accepted for reinstatement in his former position or status in the Fire Department or Police Department, as the case may be, by the Chief of the Department. The Board may change any percentage stipulated in this Act, commensurate with any change in the degree of disability; provided, however, that such percentage shall not, except in the case of discontinuance, be reduced to less than two percent (2%) of the base pay of a private per month for each year he shall have served and contributed a portion of his salary as provided by this Act, based on the current rate of pay at the time of the original granting of any pension, or on a minimum base pay of Two Hundred Dollars (\$200.00) per month, whichever is greater, for all those pensioned prior to the effective date of the 1971 amendment hereto, nor be reduced to less than two percent (2%) of the total salary excluding overtime pay for the average of the member's highest five (5) years pay (or the average of all years if service less than five (5) years) as of the time of his original retirement for each full year of service in said departments prior to such amendment. If any person receiving benefits under any provision of this Act, after due notice, fails to appear and undergo any such examination or examinations as ordered by the Board, the Board may reduce or entirely discontinue such benefits.

(b) Any member of the Fund may establish prior service credit by so expressing his intention in writing within ninety (90) days from the effective date of this Act and by thereafter paying into the Pension Fund, within six (6) months, a sum of money equal to the amount of salary deductions he would have paid had he been a member of the Fund for the year or years for which he desires to establish such prior service credit, but in no event, to exceed the total number of years served in the Fire Department and/or the Police Department, as the case may be; provided that each person who is receiving a disability pension under this Act, at the effective date hereof, will be deemed to have established prior service credit for each year served in the Fire Department or Police Department at the time of his retirement, whether he has been a contributor to the Fund for the full period of service or not.

(c) Written notice by registered letter shall be given each and every person eligible to establish such prior service credit by such city within sixty (60) days from the date such city comes under this Act, informing him of the provisions hereof.

#### Public Funds; Parking Meter Funds

Sec. 16. Funds are hereby authorized to be paid out of the General Fund or the Special Fund of any such incorporated City; and, money collected by such Cities from the use of parking meters on the streets shall be used for the purpose of carrying out the provisions of

this Act. Nothing herein is to be construed as denying any City any right which it may have at this time to raise or procure money for the benefit of said pension fund, which might be in addition to the method or methods herein provided.

#### Reserve Retirement Fund

Sec. 17. At the end of the fiscal year all money paid into the Fund that remains as a surplus over and above the orders for payment as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate interest for the benefit of the reserve funds needs. All such funds as may accumulate in this special retirement reserve shall be invested at regular intervals or at such times as the accumulations justify. The funds may be invested in the following manner:

1. A sum not to exceed ten per cent (10%) may be deposited with a Federal Credit Union restricted to employees of the city.

2. A sum not to exceed fifteen per cent (15%) may be invested in savings and loan associations which are insured by the Federal Savings & Loan Insurance Corporation, but the amount invested in any one association shall not exceed the amount insured by such corporation under the law.

3. A sum not to exceed sixty per cent (60%) of the principal value of the Fund may be invested in shares of open end investment companies, closed end investment companies, common or preferred stocks in any solvent dividend-paying corporation at the time of purchase incorporated under the laws of the State, or any other state in the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years immediately preceding the date of investment, provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation, organized under the laws of this State, or any other state of the United States, unless said corporation has at the time of investment a net worth of not less than Two Million, Five Hundred Thousand Dollars (\$2,500,000).

Of this percentage a sum not to exceed fifty per cent (50%) thereof may be invested in shares of capital stock of national banks having been established at least ten (10) years and having a capitalization of at least Five Million Dollars (\$5,000,000), and/or shares of capital stock of life insurance companies, and/or fire and casualty insurance companies having been established at least twenty-five (25) years and having a capitalization of at least Five Million Dollars (\$5,000,000).

4. A sum not to exceed seventy-five per cent (75%) may be invested in first mortgage bonds or debentures of any solvent dividend-paying corporation which at the

time of purchase was incorporated under the laws of this State or any other state in the United States and which has not defaulted in the payment of any debt within five (5) years next preceding such investment.

5. The entire Fund or any portion thereof, may be invested in United States Treasury Notes, United States Treasury Bonds, Bonds of the State of Texas, or bonds of any county or municipality of the State of Texas; or bonds or debentures, payment of which is guaranteed by an agency of the United States Government, such as Federal Intermediate Credit Bank Debentures; Federal Land Bank Bonds; Federal Home Loan Bank Notes; Banks for Cooperative Debentures; Federal National Mortgage Association Notes and any additional bonds which may be in the future issued, secured by an agency of the United States Government. The Board shall have the power to make these investments for the sole benefit of this Reserve Retirement Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the Funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the monies accumulated as the retirement needs arise.

#### Award Exempt

Sec. 18. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be assignable; shall be exempt from garnishment or other legal process; and shall be exempt from any inheritance or other tax established by State law.

#### Act as of Essence of Employment Contract

Sec. 19. This Act shall be of the essence of the Contract of Employment and appointment of the Firemen and Policemen by cities of this class; and, the deferred payment is a part of the compensation for services rendered to the city. However, no member of either of said Departments or of said Fund shall ever be entitled to any refund from said Fund on account of the money deducted from their pay for the benefit of the Pension Fund which money is in itself declared to be public money, and the property of said Fund for the benefit of the members qualifying for benefits, and their beneficiaries.

#### Vested Rights

Sec. 20. The right is vested in the persons specified in this Act to participate in such Fund and to receive the payments in strict accord herewith; and the means of its enforcement shall never be impaired nor be denied.

#### Deficiency, Payment by City

Sec. 21. The Cities included in this class shall pay the deficiency, if any, between the money procured under the terms of this Act

and the amount of the deferred payments prescribed herein.

#### Persons Included

Sec. 22. All persons in Cities of the class specified herein, who are being paid under the terms of any similar statute or ordinance, shall be included in this Act and shall continue to be paid in accord with the schedule stipulated herein.

#### Accounts

Sec. 23. The accounts of the Firemen and Policemen's Pension Fund and of firemen and policemen shall be kept separately, and if any of these classes of employees are included in any statute of the State of Texas creating a pension system, then the Board created herein shall stand in the place of any similar Board created by such statute and shall receive the apportionment due the class of employees mentioned, and shall pay the money allocated, under the terms of this Act to such class, but the other classes specified herein shall not participate in any such funds.

#### Increase in Pensions

Sec. 24. Because of the inflationary increase in the cost of living all pensions originally granted for retirement, death, or disability occurring prior to April 16, 1951, to Firemen, Policemen, and Fire Alarm Operators, or their widows or wholly dependent parents, and which pensions are less than One Hundred Dollars (\$100.00) per month, are hereby increased up to the total sum of One Hundred Dollars (\$100.00) per month in each such case beginning with the first whole month after the effective date hereof, subject to the right of the Board to change any percentage of disability, as provided by Section 15 of this Act.

#### Group II Fund, Members, Benefits, Etc.

Sec. 25. Repealed by Acts 1969, 61st Leg., p. 1675, ch. 538, § 3.

#### Increase in Existing Pensions

Sec. 26. Because of the inflationary increase in the cost of living all pensions heretofore granted in the Fund created hereunder, and which are currently being paid or are legally due to be paid before the effective date of this Act, are hereby increased in amount five and one-fourth per cent (5¼%), beginning with the first whole calendar month after the effective date hereof, subject to the right of the Board to change any percentage of disability, as provided by Section 15 of this Act. The increase herein provided shall not apply to any pension granted on and after the effective date hereof.

#### Cost of Living Increases or Decreases

Sec. 26A. (1) All pensions granted before February 1, 1971, in the Fund created hereunder, are hereby increased in the amount of ten percent (10%) or to a minimum pension of One Hundred Fifty Dollars (\$150) per month, whichever is greater, beginning with the first

whole calendar month after the effective date hereof, subject to the continuing right of the Board to change any percentage of disability, as provided by Section 15 of this Act and the One Hundred Fifty Dollars (\$150) monthly minimum shall not apply to those who have been decreased thereunder.

(2) The Board shall annually, beginning in 1972, at or before its regular meeting in the month of March, review the Cost of Living Indexes of the United States Bureau of Labor Statistics for the preceding calendar year. If such index should report an increase or decrease during such calendar year in the cost of living as much as three percent (3%) as compared with the Cost of Living Index at the close of the year 1971 (which is hereby declared to be the base index) the Board shall enter its order increasing or decreasing all pension payments (present and prospective) by three percent (3%), or more (depending on the amount of increase or decrease) but only by full percentage points closest to the exact amount of such increase or decrease. Such increase or decrease shall be effective retroactively as of the month of January next preceding such March (or earlier) Board meeting and shall continue in effect for at least one full year thereafter, and until there has been an additional increase or decrease of at least three percent (3%) compared to such base figure. Provided, however, that no pension shall ever be decreased below the amount at which it was originally granted, except pursuant to the provisions of Section 15 of this Act.

(3) The Cost of Living Index to be used for such purpose shall be the "Consumer's Price Index for Moderate Income Families in Large Cities—All Items" or (in the event the name and/or nature thereof is changed) the nearest equivalent thereto published during each particular year by the Bureau of Labor Statistics of the United States Department of Labor.

#### Cost of Living Increases and Decreases

Sec. 26B. (1) All pensions granted before August 30, 1971, in the Fund created hereunder, to pensioners who had thirty (30) years, or more, of service at the time of their retirement, if less than \$250.00 per month at the effective date of this Act, shall be increased to such amount; those who retired with twenty-five (25) years, or more, of service shall receive a minimum of \$225.00 per month; those who retired with twenty (20) years, or more, of service shall receive a minimum of \$200.00 per month; beneficiaries of those who retired prior to above date shall receive a minimum of \$225.00 per month per whole pension unless the pensioner of whom they are the beneficiaries retired with less than twenty-five (25) years service in which case each whole pension shall be a minimum of \$200.00 per month. Those who retired on disability pensions prior to the said date shall receive a minimum of \$225.00 per month subject to the continuing right of the Board to change any percentage of disability.

ty, as provided by Section 15 of this Act and percentage decreases in disability pensions under existing Board orders shall be automatically applied to the minimum disability pension amount provided above upon the effective date herewith if the full pension in such cases would be less than \$225.00 per month. The cost of living increases provided above for all classes shall take effect beginning with the first whole calendar month after the effective date of this Act.

(2) The increases granted hereunder shall be subject to the cost of living increases or decreases provided for in Section 26A(2) of this Act in the same way and to the same extent as the rest of said pensions.

(3) The cost of paying the increases provided in this section shall be paid by the city out of general funds of the city.

#### Merger of Group II Fund Into Group I Fund

Sec. 27. (a) The Fund heretofore designated as the "Firemen and Policemen's Pension Fund—Group II", as created by Section 4, Chapter 334, Acts of the 58th Legislature, 1963, and all of the monies, securities and accounts thereof, are transferred to and merged with the Fund known as the Group I Fund, and there shall hereafter be only one pension fund hereunder, to be without a numerical designation.

(b) All members of the Group II Fund, as defined in Section 25, and all firemen and policemen becoming members thereof prior to the effective date of this Act, shall automatically be transferred to and be merged with the membership of the Group I Fund, to be full-fledged members thereof, indistinguishable from any other member. Each member of Group II shall become a member of the Group I Fund as of the date such member originally became a member of the Group II Fund, for every purpose under this Act, and shall enjoy all the same rights and benefits as any other member thereof after the effective date hereof.

(c) Provided further, however, that a Group II Fund member who was previously a Group I member in good standing (having resigned from one of the Departments and later re-entering one of the Departments) shall be credited for retirement pension purposes with all post-probationary time he has served in either Department, and as a member of either Group of the Fund, upon the effective date hereof.

(d) All probationary firemen and policemen completing their probationary period, and becoming duly enrolled firemen and policemen, shall automatically become members of the new combined and unnumbered Fund.

(e) This Act shall not affect or change, in any way, the rights of Group II Fund members or their beneficiaries who may have gone on pension prior to the effective date. Provided, however, that as of the first full calendar month after the effective date hereof all pensions of such Group II members, or of their beneficiaries, shall be automatically increased

to the same level as that for Group I members as of that date.

[Acts 1941, 47th Leg., p. 134, ch. 105; Acts 1951, 52nd Leg., p. 86, ch. 56, §§ 1 to 5; Acts 1955, 54th Leg., p. 673, ch. 242, § 1; Acts 1957, 55th Leg., p. 14, ch. 11, §§ 1, 2; Acts 1959, 56th Leg., p. 795, ch. 363, §§ 1 to 17a; Acts 1963, 58th Leg., p. 869, ch. 334, §§ 1 to 4, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 371, ch. 180, §§ 1, 2, eff. May 12, 1967; Acts 1967, 60th Leg., p. 2060, ch. 763, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1675, ch. 538, §§ 1 to 3, eff. June 11, §§ 1, 2; Acts 1959, 56th Leg., p. 795, ch. 363, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 19, ch. 7, § 1, eff. Feb. 26, 1971; Acts 1971, 62nd Leg., p. 38, ch. 19, §§ 1 to 7, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1839, ch. 542, § 92, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1323, ch. 496, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1324, ch. 497, §§ 1 to 5, eff. June 14, 1973.]

Sections 6 to 9 of the amendatory Act of 1951 read as follows:

"Sec. 6. The provisions of this Act, which are amendments to certain sections of Article 6243f of Chapter 2, Title 109, of the Revised Civil Statutes of Texas, as adopted in 1941, Forty-seventh Legislature, page 134, Chapter 105, are intended only to amend those sections specifically covered and in the manner herein provided.

"Sec. 7. This Act is cumulative of and in addition to all of the sections and provisions now contained in Article 6243f of Chapter 2, Title 109 of the Revised Civil Statutes of Texas, as adopted in 1941, Forty-seventh Legislature, Page 134, Chapter 105.

"Sec. 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

"Sec. 9. If any section, subsection or clause of this Act is for any reason, held to be unconstitutional or invalid for any other reason, such decision shall not affect the validity of any of the remaining portions of this Act or the laws to which it relates, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection, or clause so declared unconstitutional or invalid."

Section 3 of Acts 1967, 60th Leg., p. 371, ch. 180, was a savings clause.

Acts 1971, 62nd Leg., p. 19, ch. 7, § 1, which added § 26A to this article, provided in § 2: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Acts 1973, 63rd Leg., p. 1323, ch. 496, § 1, which added § 26B to this article, provided in § 2: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 6243f-1. Involuntary Retirement of Firemen in Cities of 350,000 to 650,000; Age; Disability

Sec. 1. No member of a fire department in any city or town in this State having a population of not less than 350,000 nor more than 650,000, according to the last preceding federal census, shall be involuntarily retired prior to reaching the mandatory retirement age set for such cities' employees unless he is physically unable to perform his duties. In the event he is physically unable to perform his duties, he shall be allowed to use all of his accumulated sick leave, before retirement.

Sec. 2. As used in this Act, "the last preceding federal census" means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes.

[Acts 1971, 62nd Leg., p. 863, ch. 103, eff. April 30, 1971.]

### Art. 6243g. Pension System in Cities Over 900,000

#### Creation of Pension System

Sec. 1. There is hereby created a Municipal Pension System in all cities in this state having a population of nine hundred thousand (900,000) or more according to the last preceding or any future Federal Census.

#### Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, disability and Pension System for employees of cities coming within the provisions of this Act.

(b) "Member" means each city employee included in the Pension System provided for herein and becoming a member thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under this Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by an "employee" as that term is defined herein.

(e) "Pension" means benefits payable to members out of the Pension Fund upon their becoming disabled or reaching retirement age as provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the city, whether caused by death, discharge, resignation or any reason other than retirement.

(g) "Separation Allowance" means the accumulation of payments made by the employee to the Pension Fund and returned to him upon his separation from service with the city before having become eligible for a pension.

(h) The term "employee" means and includes any person whose name appears on a regular full time payroll of any such city and who is paid a regular salary for his services. Provided, that any elected official who becomes a member of the Pension System as permitted by this amended Act shall be considered to be and to have been an employee during the period of any service as an elected official.

(i) "Monthly salary" means base pay, plus longevity pay, plus shift-differential pay, if any, paid to an employee and attributable to services rendered by the employee during a calendar month regardless of how actually paid.

(j) "Prior Service" means all services and work performed as an employee prior to September 1, 1943.

(k) "Previous Service" means all services and work as an employee, other than "prior service" as herein defined, which

preceded a member's current period of employment.

(l) "Credited Service" means all services and work performed by a person as an employee, including prior service. However, if performed after September 1, 1943, such services and work must have been accompanied by corresponding contributions to the Pension Fund by the employee or legally authorized repayments thereof must have been made. Provided further, service preceding an interruption in service of ten years or longer is not "credited service".

#### Persons Eligible Under This Act

Sec. 3. The following persons are eligible under this Act:

(a) Any person who is now a member of any such System under the terms of the original Act, as amended.

(b) Any person who hereafter becomes an employee of such city shall automatically and immediately at the beginning of his first full pay period become a member of the Pension System as a condition of his employment except as hereinafter enumerated.

(c) Elected officials in good physical condition shall have the option of becoming members of the Pension System. They shall be subject to physical examinations and shall exercise the option by written notice to the Pension Board within ninety (90) days after the effective date of this amendatory Act or within ninety (90) days of the date of taking office, whichever is later. Any former member of the Pension System who shall hereafter be elected to an office of said city shall have the right to reinstatement and shall receive credit for prior service and previous service as an employee on the same conditions as reemployed members. Any elected official coming under the terms hereof who, thereafter, fails of election to said office or another elective office of the city, shall be considered as separated from the service, but if he is again elected or employed by such city within ten (10) years from the expiration of his term of office, he shall be subject to the other provisions of this Act concerning interruptions in service.

#### Persons Not Eligible Under This Act

Sec. 4. Employees of such city who may not become members of the Pension System shall include:

(a) All quasi-legislative, quasi-judicial and advisory boards and commissions;

(b) All part-time employees, other than any elected officials whose service is made part-time by law or charter;

(c) All seasonal employees;

(d) Employees covered by any other Pension System of such city to which the

city contributes or persons drawing a pension from any such system.

Pension Board

Sec. 5. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration management and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The Mayor of the City, or the Director of the Civil Service Commission as his representative.

(2) The Treasurer of the City or person performing the duties of Treasurer.

(3) Three (3) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one (1) representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established systems under the original Act, as amended. The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by appointments made by any two (2) of the Board members elected by the members of the Pension System. Such appointees shall serve for the remainder of the unexpired term of the member they replace. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Two (2) legally qualified taxpayers of such city, who have been residents of the county in which such city is located for the preceding five (5) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The two (2) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative shall be filled by the governing body of the city. Public members now on the Boards of cities having established Systems shall continue in office until the expiration of their terms.

(c) Each member of the Pension Board within ten (10) days after his appointment and

election shall take an oath of office that so far as it devolves upon him he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership annually a Chairman, Vice-Chairman and Secretary. Pursuant to the powers granted under the charter of such city, the Chief Administrative Officer of the city shall appoint one (1) or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under direction of the Chief Administrative Officer of the city and City Treasurer, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees and all administrative expenses of the Pension System shall be paid by the city.

(e) Each member of the Board shall be entitled to one (1) vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board, and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board unless waived in writing as to any proposed meeting by depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each such member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check or draft signed by the Treasurer and countersigned by the Secretary, upon an order by said Pension Board duly entered in the minutes. Facsimile signatures may be authorized by the Board. Provided, however, the Board may by contract with any bank which is a depository for such Pension Fund authorize the bank to make deductions from the Pension Fund's account with such bank in connection with the purchase by the Board of authorized investments.

(i) The Pension Board shall determine the prior service to be credited to each member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior service credit or upon affidavits if the personnel records are incomplete.

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act

save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11¼%) of such salary for the same period of time.

(4) For service on and after September 1, 1971, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13½%) of such salary for the same period of time.

(5) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of six percent (6%) per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

#### Treasurer of Pension Fund

Sec. 6. The City Treasurer of any such city, or the person discharging the duties of the City Treasurer, is hereby designated as the Treasurer of said Pension Fund for said city and his official bond to said city shall operate to cover his position of Treasurer of said Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to said Treasurer and shall be administered and

paid out only in accordance with the provisions of this Act.

#### Contributions by Members

Sec. 7. Each member of the Pension System shall make periodic contributions thereto during the entire time of his employment by the city in the amount of four percent (4%) of his salary. Such contributions shall be deducted by the city from the salary of each such member and paid to the Treasurer of the Pension Fund for deposit therein.

#### Contributions by City

Sec. 8. In addition to the payments provided for in the next preceding section, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to thirteen and one-half percent (13½%) of the total of the monthly salaries paid to members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act and Federal Insurance Contributions Act, it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be thirteen and one-half percent (13½%) of the total of all salaries paid to all such members.

#### Increase in Contributions

Sec. 9. Repealed by Acts 1969, 61st Leg., p. 2549, ch. 851, § 3.

#### Surplus: Investment

Sec. 10. Whenever, in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas or in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time, and in such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said Funds. In making each and all of such investments said Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the safety of their capital; provided, however, that not more than fifty percent (50%) of said Funds shall be in-

vested at any given time in corporate stocks, nor shall investments in securities issued by any one corporation be more than five percent (5%) of this Fund, nor shall more than five percent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors, except that two percent (2%) of the Fund may be invested in common stocks that do not have a ten (10) year dividend record. The Board shall have authority to buy and sell any of its authorized investments.

#### Retirement on Pension

Sec. 11. (a) Any member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of pension a month for each such member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no member's pension shall be more than eighty percent (80%) of such average monthly salary; and no member's pension shall be less than Eight Dollars (\$8) a month for each year of credited service.

(c) A member shall continue to accrue benefits in the Pension System as long as he remains an employee, regardless of his age. Any present employee who was prohibited by previous amendments from accruing any additional benefits upon reaching seventy (70) years of age and prevented from making further contributions into the Pension Fund shall be permitted to continue the accrual of credited service for the period from age seventy (70) until retirement by repaying in one lump sum Twelve Dollars (\$12) a month for each month of service with the city from the date that he reached seventy (70) years of age to the effective date of this amendment and making regular employee contributions thereafter. Any present employee who failed to become a member because he had passed sixty (60) years of age at the time his employment commenced shall now be permitted to become a member by repaying, in one lump sum, Twelve Dollars (\$12) a

month for each month of service with the city to the effective date of this amendment and making regular employee contributions thereafter. Any elected official who becomes a member of the Pension System as permitted by this amended Act may receive credit for any service as an elected official that preceded the effective date of this amended Act by paying, in one lump sum, Twelve Dollars (\$12) a month for each month of such preceding service and making regular employee contributions for any service with the city after the effective date of this amended Act. The city shall also contribute one and one-half (1½) times the amounts so paid into the Fund by such employees and officials.

#### Disability Pensions

Sec. 12. (a) Any member who has completed ten (10) or more years of service and who becomes totally disabled for further duty shall, regardless of age, be retired for "ordinary disability" and shall receive a monthly pension computed in accordance with Section 11(b).

(b) If any member who becomes totally disabled for further duty by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a member, without serious and willful misconduct on his part, shall be retired for "accidental disability" and shall receive a monthly pension equal to twenty percent (20%) of his monthly salary on the date such injury was sustained or such hazard was undergone plus one percent (1%) of the above salary for each year of credited service; provided, that the total pension as so computed will not exceed forty percent (40%) of such monthly salary, or a monthly pension computed in accordance with Section 11(b), whichever is greater.

(c) By "totally disabled" is meant the sustaining of such disability as completely incapacitates a member from performing the usual and customary duties which he has been performing for such city or other full time duties that could be performed by such member. Before any disability pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total disability, as above provided.

(d) Any member receiving a pension on account of "ordinary" or "accidental disability" shall, each January 1, submit a sworn affidavit stating his earnings, if any, obtained from any gainful occupation. If the earnings together with the pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

If a member is eligible for retirement under Section 11 hereof, he shall not be retired under this Section.

When any member has been retired for ordinary or accidental disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.

#### Monthly Allowance to Widows and Children

Sec. 13. If any member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any member shall die from any cause growing out of or in consequence of the performance of his duty, or shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half ( $\frac{1}{2}$ ) of the retirement benefits that the deceased member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death.

(b) To the guardian of each child the sum of Sixteen Dollars (\$16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars (\$32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the pensioner had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child

becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. By the term "guardian," as used herein, shall be meant the surviving widow or widower with whom the child or children reside, or any guardian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing."

#### Refund of Contributions

Sec. 14. If any member's employment by the city is terminated for other than total and permanent disability arising as a result of or as a consequence of the performance of his duties prior to his having completed ten (10) years of service with the city, he shall not be paid any pension whatsoever, but he shall receive the amount paid by him into the Pension Fund by way of salary deduction without interest as provided in Section 16 of this Act. In the event of his death, if there are no widow or children to receive the allowance provided for in Section 13 above, his beneficiary, and if none, his estate shall receive the said amount.

#### Computing Period of Service

Sec. 15. In the computation of the years of service required for the receipt of a pension by a retiring member, the following rules shall apply:

(a) Interruptions of service of three (3) months or less shall be treated as continuous service, but the member shall be required to pay into the Pension Fund any contributions withdrawn at the time of separation plus the amount of the employee contributions allocable to each such period of interruption.

(b) If there have been interruptions of service of more than three (3) months and less than ten (10) years, no credit shall be allowed for the period of an interruption but credit shall be allowed for previous service and prior service if (1) the employee shall have repaid to the Pension Fund within three (3) months after resumption of service all moneys theretofore withdrawn by him upon separation from service, plus interest thereon at the rate of six percent (6%) per annum, or (2) if the employee shall at any time have made payments to the Pension Fund which, under then existing provisions of law, entitled him to credit for previous service.

(c) If any employee has been out of service for a period longer than ten (10) years, no credit for any service preceding the out-of-service period shall be allowed.

#### Termination of Employment; Death; Reemployment

Sec. 16. When any member of such Pension System shall leave the employment of such

city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions without interest, subject to the following provisos:

(a) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(b) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(c) If, while still employed by the city, whether eligible for a pension or not, a member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(d) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former member who has made the election permitted by (a) or (b) above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) It is not the intention of this Amending Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in

the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(f) When a member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city, he shall thereupon be reinstated as a member of such Pension System, provided he is in good physical and mental condition as evidenced by a written certificate by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom and also shall, within three (3) months after his reemployment by the city, repay in one lump sum to such Pension Fund all moneys withdrawn by him upon his separation from the service plus interest thereon at the rate of six percent (6%) a year from the date of such withdrawal. The three (3) months limitation above mentioned is subject, nevertheless, to the Board's authority as expressed in Section 5(j).

(g) If any member of the pension system, after having made the election permitted by (a) or (b), above, at the time of separation from the service of the city prior to September 1, 1971, shall be reemployed by the city before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time said election was made.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

#### Reduction of Benefits; Dissolution of System

Sec. 17. (a) In the event said Pension Fund becomes seriously depleted in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries, as and when

said Fund is, in the opinion of the Pension Board, sufficiently reestablished to do so. Should the reserve and surplus in the Pension Fund become exhausted and, at such time, the outgo of the Pension Fund exceeds the income thereto, then, in such event, the governing body of the city shall have the right, by ordinance duly passed, to dissolve the Pension System and require liquidation thereof without any liability to the city whatsoever.

(b) Any member or survivor receiving a retirement pension may, at his option, receive any smaller retirement pension after properly requesting same in writing to the Pension Board.

(c) In the event any member dies within three (3) years from his retirement date and leaves no widow or minor children, his estate shall be entitled to payment in a lump sum, the excess, if any, of his accumulated contributions to the date of his retirement over the aggregate monthly benefit payments received by the member.

#### Legal Services

Sec. 18. The City Attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside legal advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of said Pension Fund.

#### Actuary

Sec. 19. Such Pension Board may, at its discretion, from time to time, employ an actuary which cost shall be paid for by the city. The governing body of the city may require that an actuarial study, survey and report be made of such Pension System not more than once every five (5) years.

#### Exemption From Execution, Attachment or Other Writ

Sec. 20. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any court of this state for the payment or satisfaction in whole or in part out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purpose whatsoever, except that the pen-

sioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of the city's group hospitalization and life insurance plan.

#### Members in Military Service

Sec. 21. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose any previous years of service with the city caused by such military service. Furthermore, the city shall not be required to make any monthly payments into the Pension Fund on such member while he is engaged in the military service. Any member who engages in active military service shall, if he returns to employment by the city within three (3) months after termination of such service, receive credit for his time in such service and shall immediately at the beginning of his first full pay period begin repaying to the Pension Fund the equivalent of all monthly contributions for the total number of months elapsed since he went into such service, such repayment to be completed within twenty-four (24) months of reemployment, and the city shall pay into the Fund one and one-half (1½) times such amount. Credit for military service shall be limited to twenty-four (24) months, unless such period is extended by the Pension Board.

#### Employees on Retirement When Act Enacted

Sec. 22. Subject to the provisions of Section 17, any former employee of any city now on retirement by such city shall hereafter be paid at the same rate he is now receiving and it is not the intention of this Act to change the status of any member now on Pension by such city.

#### Cities With Pension Provisions in Their Charter

Sec. 23. The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms and provisions of its charter.

#### Creation of Pension System for Employees Transferred En Masse to Newly Created Governmental Subdivision

Sec. 23a. Notwithstanding any other provision of this Article 6243g should a governmental subdivision which has been or may be formed in the future to assume and perform the function of a department, agency, or other establishment which was formerly operated by the city or jointly by the city with another governmental subdivision and all employees who performed services for such a department, agency or other establishment were transferred en masse to the newly created governmental subdivision formed to assume and perform the function of the department, agency or other establishment for which such employees performed services prior to their transfer, then such newly created governmental subdivision through its governing body may elect to create a pension system for such transferred employees within ninety days of the enactment of this amendatory act or within ninety days of

the creation of such newly created governmental subdivision, whichever occurs later, and the Pension Board of the Pension System established by the city shall, within thirty days after being notified by the governing body of the newly created governmental subdivision of its intention to create a pension system for such transferred employees, transfer to such governing body in cash and/or in obligations of the United States Government of equal fair market value at date of transfer all contributions made by the transferred employees to the Pension System of the city prior to their transfer, who were not eligible and had not elected benefits under the Pension System at the time of transfer, together with all contributions made by the city and/or any other governmental subdivision to the Pension System of the city on behalf of such transferred employees, all without interest. Such payment by the Pension Board of the Pension System of the city shall be in full satisfaction of all claims such transferred employees may have on the Pension System of the city. If the governing body of the newly created governmental subdivision elects not to create, or fails to elect to create, a pension system for the transferred employees within ninety days of the enactment of this amendatory act or within ninety days of the creation of such newly created governmental subdivision, whichever occurs later, then the Pension Board of the Pension System of the city shall refund to each of the transferred employees who was not eligible and had not elected benefits under the Pension System of the city at the time of transfer his own contributions, without interest, in satisfaction of any claim such transferred employee may have on the Pension System of the city. The rights of any transferred employee who was eligible at the time of transfer and had timely elected a benefit under the Pension System of the city shall not be affected by this Section and such employee shall be entitled to all benefits which had accrued to him or her under the Pension System of the city at the time of transfer without regard to this amendatory act.

**Effective Date of Increase in Contributions**

Sec. 24. The increase in employee and city contributions resulting from the adoption of this amended Act, as provided in Section 7 and Section 8 hereof, shall become effective at the beginning of the next regular pay period of such city occurring after the expiration of ten (10) days from the effective date of this Act.

[Acts 1943, 48th Leg., p. 619, ch. 358; Acts 1947, 50th Leg., p. 335, ch. 193, § 1; Acts 1951, 52nd Leg., p. 378, ch. 242, §§ 1, 2, eff. Jan. 1, 1952; Acts 1953, 53rd Leg., p. 888, ch. 367, §§ 1 to 5; Acts 1957, 55th Leg., p. 1194, ch. 398, § 1; Acts 1959, 56th Leg., p. 1099, ch. 501, §§ 1, 2; Acts 1961, 57th Leg., 1st C.S., p. 18, ch. 5, § 1; Acts 1965, 59th Leg., p. 246, ch. 107, § 1, eff. May 3, 1965; Acts 1967, 60th Leg., p. 321, ch. 154, § 1, eff. May 12, 1967; Acts 1967, 60th Leg., p. 843, ch. 354, § 1, eff. June 8, 1967; Acts 1969, 61st Leg., p. 2549, ch. 851, §§ 1 to 3, eff. Jan. 5, 1970; Acts 1971, 62nd Leg., p. 821, ch. 90, §§ 1 to 9, eff. Sept. 1, 1971.]

Acts 1961, 57th Leg., 1st C.S., p. 18, ch. 5, § 2 provided: "The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms of their charter."

Acts 1967, 60th Leg., p. 321, ch. 154, § 2 provided: "Partial invalidity. If any provision, Section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Acts 1967, 60th Leg., p. 843, ch. 354, § 2 provided: "It is hereby declared to be the legislative intent to enact each separate provision of this Act dependent upon each of the other provisions, and if any clause, sentence, or part of this Act shall be declared unconstitutional then no other clause, sentence or part thereof shall be given any effect; and to this end the provisions of this Act are declared not to be severable."

Acts 1971, 62nd Leg., p. 821, ch. 90, which by §§ 1 to 8 amended §§ 2, 5, 7, 8, 11, 12 and 13 of this article, in sections 10 and 11 provided:

"Sec. 10. The provisions of Section 1 to Section 8, inclusive, of this amendatory Act shall become effective at 12:01 a. m. on the 1st day of September, 1971.

"Sec. 11. Partial Invalidity. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

**Art. 6243g-1. Police Officers' Pension System in Cities of 1,200,000 or More**

**Creation of Fund**

Sec. 1. For the purposes of this Act, there is hereby created in this State a special fund to be known and designated as the Police Officer's Pension Fund in each city in this State having a population of one million two hundred thousand (1,200,000) inhabitants or more according to the last preceding or any future Federal Census.

**Definitions**

Sec. 2. The following words and phrases when used in this Act are defined as follows, to-wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any police department coming within the provisions of this Act.

(b) "Member" means any and all employees in the police department provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the police department.

(e) "Pension" means payment for life to the police department member out of the Pension Fund provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the City in the police department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

**Membership**

Sec. 3. (a) Any person who holds a classified position in the police department of such city shall automatically become a member of

the Police Officers Pension System upon the effective date of this Act.

(b) Any person who hereafter becomes an employee, and is appointed to a classified position in the police department shall automatically become a member of the Police Pension System as a condition of his employment.

(c) Employees of such police department who may not become members of the Pension System shall include part-time, seasonal or other temporary employees.

#### Pension Board

Sec. 4. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management, and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the City, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected members of the Pension Board, being neither employees nor officers of such city.

(4) The City Treasurer of the city, or the person discharging the duties of the City Treasurer.

The terms of office of the elected members of the Pension Board shall be three (3) years, provided, however, that at the first election after the effective date of this Act, one such elected member shall be elected to a term of one year, one such elected member shall be elected to a term of two (2) years; and one such elected member shall be elected to a term of three (3) years. Thereafter, at an annual election called by the Chief of Police, and held during the month of December, one member shall be elected to a three-year term.

The term of office of appointed members of the Board shall be two (2) years, such appointments shall be made by the elected members of the Board and shall commence when the appointed members are qualified, in January after the effective day of this Act.

The term of office of the Board members statutorily provided for, shall be and continue so long as such member holds the position defined in this Act for automatic members of such Board.

(c) Each member of the Pension Board within thirty (30) days after his appointment or election shall take an oath of office that he will diligently and honestly administer the af-

fairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this Act.

(d) The Board shall elect from its membership, annually, a chairman, vice-chairman and secretary. Pursuant to the powers granted under the charter of such city, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under the direction of the mayor or administrative head of the city and treasurer or director of the treasury shall keep all of the records of, and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Each member of the Board shall be entitled to one vote in the Board, four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board and four (4) members shall constitute a quorum.

(f) A meeting of the Pension Board may be called at any time by the chairman, secretary, or any four (4) members of the Board.

(g) Notice shall be given to all members of the Pension Board, unless waived in writing, as to any proposed meeting, by the depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check, or draft signed by the treasurer and countersigned by the chairman or secretary, upon an order by the Pension Board duly entered in the minutes.

(i) The Pension Board shall determine the prior service to be credited to each present employee of the police department who becomes a member of the Pension System. The Board shall rely upon the personnel records of the city in determining such prior-service credits.

#### Treasurer

Sec. 5. The city treasurer or director of the treasury is hereby designated as the treasurer of the Pension Fund for the Police Officers Pension System, and his official bond to the city shall operate to cover his position as treasurer of such Pension Fund and his sureties shall be liable in connection with the treasurer's actions pertaining to such Fund as fully as they are liable under the term of the bond for the other actions and conduct of the treasurer. All moneys of every kind and character collected or to be collected for the Fund shall be paid over to the treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### Contributions by Members

Sec. 6. (a) Commencing with the first day of the month following the expiration of thirty (30) days after the passage of this Act or after

the date of publication of the final census report which shows that the city has attained a population of nine hundred thousand (900,000) or more inhabitants, each member of the Pension Fund shall pay into such Fund each month, the sum of five percent (5%) of the base salary provided for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary of each member monthly and paid to the treasurer of the Pension Fund. Should an emergency arise and the Pension Board deem it necessary for the welfare of the Pension System, the Board may raise the monthly payments of each member of the Pension System to an amount not to exceed ten percent (10%) of the base salary provided for the classified position in the police department held by the member.

(b) The maximum employee contribution which may be made to the fund by a member, other than a member holding a position above the third highest classification on the effective date of this Act, shall be limited to a contribution based on the salary of the third highest classification within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member, other than a member holding a position above the third highest classification on the effective date of this Act, to the salary level of the third highest rank of the police department personnel classification schedule.

#### Monthly Payment by City

Sec. 7. In addition to the payments in the next preceding Section, the city shall pay monthly into the Pension Fund, from the general or other appropriate fund of the city, an amount equal to seven and one-half percent (7½%) of the payroll of the police department. However, should the Police Pension Board deem it necessary for the welfare of the Pension System to increase the contribution of each member of the Police Pension System within the statutory limits of Section 6 of this Act, then the contribution made to the Police Pension System by the city may, with the approval of the City Council, be increased by not less than one and one-half (1½) times the percentage increase in contribution of the members. As an example: If contributing members are assessed at a six percent (6%) contribution rate, then the city may, by appropriate Council action, raise its contribution to not more than nine percent (9%) of the payroll of the police department.

#### Reduction of Benefits

Sec. 8. In the event that the Pension Fund become seriously depleted in the opinion of the Pension Board, the Pension Board may temporarily reduce the benefits of pensioners and beneficiaries, but such benefits may be restored to such pensioners and beneficiaries when the fund is, in the opinion of the Pension Board, sufficiently reestablished to do so.

However, no pensioner or beneficiary shall be entitled to any benefits lost to him as a result of the temporary reduction in benefits.

#### Investment of Surplus

Sec. 9. (a) Whenever in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas, or in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time, and in such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said funds. The funds may also be invested in a sum not to exceed ten percent (10%) with a Federal Credit Union restricted to employees of the city. In making each and all investments, such Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital; provided, however, that not more than fifty percent (50%) of said funds shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of said funds be invested in securities issued by any one (1) corporation, nor more than five percent (5%) of the voting stock of any one (1) corporation be owned; and provided further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase, and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Security and Exchange Commission or its successors.

(b) The mayor may appoint an Investment Review Committee, consisting of three (3) qualified persons to be selected from the Trust Departments of the banks of the cities to which this law applies. Such persons shall be experienced in securities and investment matters. The Investment Review Committee shall be appointed for a two year term. Such Committee shall (a) review the investments of the Fund to determine their suitability and desirability for the Funds; (b) review the investment procedures and policies pursued by the Board in the administration of the Fund; and (c) submit an annual report of its findings and recommendations to the Pension Board of the Police Officer's Pension System and the Mayor

of the city within ninety (90) days after the end of each calendar year.

**Transfer of Existing Pension Fund**

Sec. 10. Immediately upon passage of this Act, the city pension officer or anyone discharging the duties of the pension officer shall transfer the pro rata share of any existing Police Officer's Pension Fund to the Police Officer's Pension Fund established by this Act.

**Retirement: Amount of Pension**

Sec. 11. (a) From and after passage of this Act, any member of such Pension System who has been in the service of the city police department for the period of twenty (20) years shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement.

(b) From and after the passage of this Act, if a member of the Police Pension System is promoted or appointed to any classified position above the third highest in the personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the third highest classified positions in the police department.

(c) From and after the passage of this Act any member of such Pension System who has been in the service of the city police department for a period of years in excess of twenty (20) years, and who retires from the service of the police department, shall, in addition to the thirty percent (30%) of his base salary be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. For example, a member with twenty-five (25) years' service would be entitled to forty percent (40%); a member with thirty (30) years, fifty percent (50%); etc.

(d) It shall be compulsory for any member to retire from the service of the police department upon attaining the age of sixty-five (65) years. Failure of any member of the Pension System to comply with this provision shall deprive the member and his dependents of any of the benefits provided for herein. If at the time of retirement because of maximum age requirements, the member has completed less than twenty (20) years of service, his monthly retirement pension shall be prorated on the basis of one and one-half percent (1½%) of the base salary of the position of the member per month for each year of service completed.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or invol-

untary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.

(f) No member shall be required to make any payments into the Pension Fund after the member has retired from the service of the police department.

**Disability Benefits**

Sec. 12. Any member of the police department who becomes incapacitated for the performance of his duty by reasons of any bodily injury received in, or illness caused by, the performance of his duty shall, upon presentation to the Pension Board of proof of permanent disability, be retired and shall receive a retirement allowance equal to the percentage of his disability. Such allowance shall be computed on the same basis as a service retirement with regard to length of service; for example, if the member is fifty percent (50%) disabled he shall receive one-half (½) the retirement allowance granted a member as a service retirement for the period of service he has completed, provided that in case of a disability retirement before the member has completed twenty (20) years of service, he shall receive an allowance based on the minimum allowed for twenty (20) years service. Such allowance as is granted by the Pension Board shall be paid the member for the remainder of his life or so long as he remains incapacitated. When any member has been retired for permanent, total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member refuses to submit himself to any such examination, the Pension Board may, within its discretion, order the payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for the city in the police department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such payment stopped. No person shall be retired either for total or partial disability unless he files with the Pension Board an application for allowance, at which time the Pension Board shall have him examined by no fewer than three (3) physicians, to be chosen by the Pension Board and who are to make their report to the Pension Board.

## Rights of Survivors

Sec. 13. (a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies from any cause whatsoever and leaves surviving a spouse to whom the member was married prior to his retirement, or if any such member dies from any cause whatsoever after he has become entitled to an allowance or pension and leaves a surviving spouse, or if while in service any such member dies from any cause growing out of or in consequence of the performance of his duty, and leaves a surviving spouse, or if a member dies under any of the above circumstances and leaves a surviving child or children under the age of eighteen (18) years or leaves a dependent parent, the Board shall order paid a monthly allowance as follows:

(a) to the spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member at the time of retirement or which would have been granted to the member upon service or disability pension based on his length of service in the police department;

(b) to the guardian of each child, the sum of twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries;

(c) to the dependent parent, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(b) If any member of the Pension System has not completed ten (10) years or more of service in the police department and is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse and/or dependent child or children shall be refunded any contributions which the member made to the Pension System, provided that only contributions made by the member himself shall be refunded.

(c) If any member who has completed ten (10) years or more of service in the police department is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse and/or dependent child or children shall receive the same benefits as under Section 13(a) of this Act.

## Computation of Length of Service

Sec. 14. In computing the length of service required for retirement pension, continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service. If out of service more than two (2) years, no service prior to the interruption shall be counted, other than provided in Section 22.

## Termination of Employment: Reemployment

Sec. 15. When any member of the Pension System leaves the employment of the police department other than as provided for in Section 12 or Section 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of the Pension System. No member leaving the employment of the police department and the membership in the Pension System shall be refunded any money paid by the member into the System as contribution or any of the moneys paid into the System by any source except as stated in Section 13(b) and in Section 22. If such person is thereafter reemployed by the city police department, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with the city police department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom and makes within six (6) months after his reemployment by the city in the police department written application to the Pension Board for reinstatement in the Pension System.

## Transfer From Another Department

Sec. 16. No prior credit shall be allowed for service to any person who transfers from some other department in the city to the police department. For example, if one is transferred from some other department of the city to the city police department, such person's service will be computed from the day he enters the city police department.

## Donations

Sec. 17. The Police Officer's Pension System may accept gifts and donations, and such gifts and donations shall be added to the Pension Fund for the use of such system.

## Conviction of Felony

Sec. 18. Whenever any person who has been granted an allowance hereunder is convicted of a felony, then the Board shall order the allowance so granted or allowed such person discontinued, and in lieu thereof shall order to be paid to his spouse or dependent child, children, or dependent parent the amount herein provided to be paid such dependent or dependents in case of death of the person so originally granted or entitled to allowance.

## Legal Advice

Sec. 19. The City Attorney of the city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board, may, however, if it deems necessary, employ outside advice to the exclusion of, or to assist, the City Attorney,

and pay reasonable compensation therefor out of the Pension Fund.

**Exemption of Benefits From Execution, Etc.,  
Assignment**

Sec. 20. No portion of the Pension Fund, either before or after its order of disbursement by the Pension Board, and no amounts due or to become due any beneficiary or pensioner under this Act, shall be held, seized, taken, subject to, detained, or levied, upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment or satisfaction, in whole or in part, out of the Pension Fund, of any debt, damage, claim, demand, or judgment against any members, pensioners, dependents, or any person whomsoever, nor shall such pension funds or any part thereof or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. The Pension Fund shall be sacredly held, kept, and disbursed for the purposes provided in this Act, and for no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of any group insurance program in which the pensioner may be entitled to participate.

**Actuary**

Sec. 21. Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every ten (10) years.

**Members in Military Service**

Sec. 22. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided in this Act, nor shall they lose any previous years' service with the city, caused by such military service. Such military service shall count as continuous service in the police department provided that when the member is discharged from the military service, he shall return to the city police department under provisions of the city charter, and his military service shall not exceed the national emergency for that period of military service. The city, however, shall be required to make its regular monthly payments into the Pension Fund on each member while he is engaged in the military service. In the event of death of a member of the Pension System, either directly or indirectly caused from such military service, his spouse or dependent parent or other dependents shall be entitled to receive a refund as stated in Section 13(b).

**Actions for Funds Misapplied, Etc.**

Sec. 23. The Pension Board shall have the power and authority to recover by civil action

from any offending party, or from his bondsman, if any, any moneys paid out or obtained from the Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of the Board for the use and benefit of such funds.

**Former Employees on Retirement When Act Enacted**

Sec. 24. (a) The former employees of any such police department now on retirement shall hereafter be paid a monthly pension from the Pension Fund provided for herein in the same amount and under the same conditions as are provided herein for present and future employees of the police department becoming members of the Pension System. Provided, however, that from and after the passage of this Act, any member of such pension system who retired prior to January 1, 1968, and who has served more than the minimum required twenty (20) years, shall receive in addition to the minimum thirty percent (30%) of his base salary per month, an additional sum monthly equal to one percent (1%) of his monthly salary for each year in excess of 20, and provided that those members who retired after January 1, 1968, and who have served more than the minimum required twenty (20) years, shall receive in addition to the minimum thirty percent (30%) of his base salary per month, an additional sum monthly equal to two percent (2%) of his monthly salary for each year served in excess of the minimum twenty (20) years.

(b) On the effective day of this Act, any person holding a position above the third highest classification in the Police Department salary schedule, shall be entitled to retire and receive benefits as scheduled in Section 11, (a) and (c). He shall also be covered under Section 24(a).

(c) After the effective date of this Act, any person who is appointed to, or promoted to any position or classification in the police department salary schedule higher than the third highest position, and who thereafter retires, under Section 11(b) or any other Section of this Act wherein benefits are enumerated, that person's benefits shall be based on the salary of the third highest classification of the police department salary schedule.

[Acts 1947, 50th Leg., p. 124, ch. 76; Acts 1955, 54th Leg., p. 62, ch. 45, § 1; Acts 1961, 57th Leg., p. 676, ch. 313, §§ 1, 1(a); Acts 1963, 58th Leg., p. 1262, ch. 485; Acts 1965, 59th Leg., p. 640, ch. 315, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 528, ch. 232, § 1, eff. May 19, 1967; Acts 1969, 61st Leg., p. 638, ch. 220, § 1, eff. May 14, 1969; Acts 1971, 62nd Leg., p. 2454, ch. 794, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 602, ch. 256, § 1, eff. Aug. 27, 1973.]

Acts 1969, 61st Leg., p. 638, ch. 220, § 1, reenacting and amending this article, provided in sections 2 and 3:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed to the extent of such conflict."

**Art. 6243g-2. Validation of Pension Systems**

All Municipal Pension Systems established and operating under an Act of the Forty-eighth Legislature, 1943, page 619, Chapter 358,<sup>1</sup> and all proceedings and actions done and undertaken in connection with such systems are hereby validated, confirmed and legalized.

[Acts 1947, 50th Leg., p. 334, ch. 192, § 1.]

<sup>1</sup> Article 6243g.

**Art. 6243h. Texas Municipal Retirement System****Creation of Fund**

Sec. I. A retirement and disability pension system is hereby created, to be operated under the management of a Board of Trustees of the Texas Municipal Retirement System, to be maintained and administered in accordance with the provisions of this Act, to provide for the payment of annuities and other benefits to employees and to beneficiaries of employees of participating municipalities in this State pursuant to Section 51-f, Article 3, of the Constitution of the State of Texas.

The pension system so created shall have all the power and privileges of a corporation and shall be known as the "Texas Municipal Retirement System," and by such name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held.

**Definitions**

Sec. II. The following words and phrases as used herein, unless different meanings are plainly indicated by their context, shall have the following meanings, respectively:

1. "Accumulated Deposits" means the sums of all deposits received from a member then credited to the account of such member, together with interest thereon at the effective rate for the respective years.

2. "Actuarial Tables" means such experience, probability and other tables as are adopted by the Board as necessary to administration of this Act.

3. "Annuitant" means a person receiving an annuity from this System.

4. "Annuity" means a series of equal monthly payments payable at the end of each calendar month during the life of the annuitant. The first payment shall be due at the end of the first calendar month following the date of approval of the application for retirement by the Board. No payment shall be made for any fraction of a month elapsing at the time of death.

5. "Beneficiary" means the person or persons designated as such by the member or annuitant in the last written designation on file with the Board, or if no person so designated survives, or if no designation is on file, the estate of the member or annuitant.

6. "Board" means the Board of Trustees of the Texas Municipal Retirement System created by this Act.

7. "Deposits" means the amounts required to be paid to this System by a member.

8. "Current Service Annuity" means the annuity, actuarially determined, derived from (a) reserve funds arising from a member's deposits, and (b) an additional amount of reserve funds arising from the normal contributions of the employing municipality, equal to the member's accumulated deposits, or in such greater sum as the employing municipality may have undertaken in the manner hereinafter authorized, to provide for the purpose.

9. "Current Service" means service as an "employee" rendered while a member of the System.

10. "Department" means any recognized division comprising one of the functions of operation of a municipality, e. g., utility, public health, police, fire, office, public works, etc.

11. "Director" means the Executive Secretary appointed by the Board to manage and administer this System under the supervision and direction of the Board.

12. "Earnings" means an amount equal to the sum of the payments made to an employee for performance of personal services as certified on a written payroll of the employing Department, plus the money value as determined by the Board of any meals, lodgings, fuel or other allowances provided for such employee in lieu of money. Provided, however, that earnings in excess of Three Thousand, Six Hundred (\$3,600.00) Dollars in any one year shall not be considered in calculating the average prior service compensation of any member; and provided further, that earnings in excess of the sums specified by the municipality as provided in paragraph (c), subsection 1 of Section IV hereof, shall be excluded in calculating deposits and contributions to be made by reason of current service of each member employed by such municipality; and provided that in the event no maximum amount is so designated by the participating municipality, the maximum earnings which shall be considered for such purposes shall be limited to Three Thousand, Six Hundred (\$3,600.00) Dollars in any one year.

13. "Rate of Earnings" means the actual rate upon which the earnings of an employee are calculated at the time, as certified by the employing municipality, converted into earnings for any period on the assumption that, unless specifically provided otherwise, the following are equivalents: two thousand, four hundred (2,400) hours, three hundred (300) days,

fifty-two (52) weeks, twelve (12) months, one (1) year.

14. "Employee" means any person who receives compensation from and is certified by a municipality as being a regular full-time employee or as a regular part-time employee employed in a position normally requiring actual performance of duty during not less than one thousand (1,000) hours a year; provided, however, that the term "employee" does not include any person:

(a) As to any service for which he would be eligible to be included in and for which he is entitled to receive credit in the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the Judicial Retirement System of Texas, the Texas County and District Retirement System, or any other pension fund or retirement system supported wholly or partly at public expense; but nothing herein contained shall be construed as precluding simultaneous coverage of persons under the Federal Old Age and Survivors Insurance System or any successor thereto, and this System, by reason of the same service.

(b) Who is elected to office by vote of the people, it being further specifically provided, however, that a voluntary fireman or elected official who meets the definition of employee in some capacity other than as a voluntary fireman or elected official shall be considered as an "employee" for the purposes of this Act to the extent of such other capacity.

15. "Average Prior Service Compensation" shall mean the average monthly earnings for service rendered to a participating municipality by an employee of a participating department of such municipality during the thirty-six (36) months immediately preceding the effective date of participation of such department or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service in such thirty-six (36) month period.

16. "Municipality" means any incorporated city or town now existing or hereafter created within the State; and, for the purpose of including its employees within the provisions of the fund, the Texas Municipal Retirement System; and for the purpose of continuing the coverage of its present members and annuitants, the Texas Municipal League; but persons employed for the first time by the Texas Municipal League after the effective date of this amendment shall not be eligible to membership of the System by reason of such employment.

17. "Retirement System" means the Texas Municipal Retirement System hereby created.

18. "Participating Department" means any department included within the provisions of this System in accordance with this Act.

19. "Participating Municipality" means any municipality included within the provisions of this System in accordance with this Act.

20. "Member" means any employee included in the membership of the System as provided in this Act.

21. As used in provisions of this Act authorizing allowance or assumption of "regular interest", the term means as to all periods or intervals of time elapsing prior to January 1, 1970, the rate of two and one-half per centum (2-½%) per annum compounded annually; and as to all periods or intervals of time elapsing from and after January 1, 1970, the rate of three per centum (3%) per annum, compounded annually.

22. "Service" means service as an employee as defined in Subsection (14) of this Section.

(a) "Prior Service" means service rendered to a participating municipality by an employee of a participating department of such municipality prior to the effective date of participation of such department.

(b) "Creditable Service" means "Prior Service" plus "Current Service" for which credit is allowable as provided in Section VI of this Act.

23. "Prior Service Annuity" means the annuity, actuarially determined, which can be provided from the "Accumulated Prior Service Credit", the "Accumulated Special Prior Service Credit" and from the "Accumulated Antecedent Service Credit", if any, to which a member is entitled at time of his retirement.

24. "Current Interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on December 31 of such year before the transfer of interest to other funds, less an amount equal to regular interest for said year upon the sum of the mean amount in the Current Service Annuity Reserve Fund during such year and the mean amount in the Municipality Prior Service Accumulation Fund during such year and the mean amount in the Prior Service Annuity Reserve Fund during such year by (2) an amount equal to the amount in the Municipality Current Service Accumulation Fund at the beginning of such year plus the amount in the Endowment Fund at the beginning of such year and plus the sum of

the accumulated deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the Retirement System on December 31 of such year before any transfers for retirements effective December 31 of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than the rate of regular interest applicable for the same year.

25. "Standard Service Retirement Benefit" shall mean a reduced current service annuity and a reduced prior service annuity, but with a total of sixty payments assured, and calculated as provided in Section VII hereof.

26. "Standard Disability Retirement Benefit" shall mean a current service annuity and a prior service annuity calculated as provided in Section VII hereof.

27. "Retirement" shall mean withdrawal from service with a retirement allowance granted under the provisions of this Act.

28. "Service Retirement" means the retirement of a member from service with a service retirement allowance as provided in Section VII of this Act.

29. "Disability Retirement" means the retirement of a member from service with a disability retirement allowance as provided in Section VII of this Act.

30. "Annuity Reserve" shall mean the present value computed upon the basis of such annuity or mortality tables as shall be adopted by the Board with regular interest, of all payments to be made on account of the annuity or benefit in lieu thereof, granted to a member under the provisions of this Act.

31. "Actuarial Equivalent" shall mean a benefit of equal value when computed upon the basis of such annuity or mortality table as shall be adopted by the Board and regular interest.

#### Participation

### Sec. III. 1. Participation of Municipalities and Departments

(a) Each municipality electing to have one or more of its departments participate in this System shall be included within and subject to the provisions of this System. Election to have any department or departments participate shall be by vote of the governing body of the municipality in accordance with the usual procedure prescribed for other official actions of the municipality. The governing body of any municipality so electing shall notify the Board of such action within ten (10) days thereafter designating the names of the department or departments to be included. Participation of any department shall be-

gin as of the first day of the second month immediately following receipt of notice of election to participate.

(b) The Board is hereby authorized to make and enforce rules with reference to the time of beginning operations and of participation and to notice, information and reports required of municipalities electing to participate in this System.

(c) A municipality which once elects to participate in the System may refuse to add new departments or new employees but shall never discontinue as to any members.

(d) Upon petition of qualified electors thereof equal to ten percentum (10%) of the total number of votes cast at the last regular municipal election, the governing body of any municipality shall order an election to be held not more than sixty (60) days after the filing of such petition to determine whether such municipality or such department or departments thereof named in the petition shall participate and the governing body shall immediately arrange for the participation of such municipality or department or departments if a majority of the votes cast at such election be in favor of such participation.

### 2. Participation of Employees

The membership of the Retirement System shall be composed as follows:

(a) All persons who are employees of a participating department on the effective date of the participation of such department shall become members of the Retirement System as of that date. This, however, shall not apply to any person who on the effective date hereof has a contract of employment with a municipality which would be violated by the requirement of participation as herein specified, unless such person elects to become a member, but each such person who shall have had deposits to this System deducted or who shall have been notified of the creation of this System shall be deemed to have elected to become a member unless such person files with the Board prior to the effective date of participation a written notice of election not to become a member. Any person so electing not to become a member shall forever thereafter be precluded from becoming a member of this System.

(b) Any person not a member of this System, who becomes an employee for the first time of a participating department of a municipality after the effective date of participation, of such department shall become a member of the System upon the date such person becomes an employee, provided he is then under the age of fifty (50) years but any such person who is fifty (50) years or over on such date of employment shall not be eligible to become a member of this System.

(c) Any person, not a member of this System, who has been an employee of a participating municipality prior to the effective date of participation of such municipality but who is not an employee of such participating municipality on the effective date of participation of such municipality shall, if he again becomes an employee of a participating department of such municipality after the effective date of participation of such department, become a member of the System upon the date he again becomes an employee, provided he is then under the age of fifty (50) years or provided the extent of his prior service to such municipality is equal to or in excess of the period by which his then attained age exceeds the age of fifty (50) years, and otherwise such person shall not be eligible to become a member of this System.

(d) Any person who has been a member of this System and whose membership has terminated by withdrawal, shall, if he again becomes an employee of a participating department of a municipality, become a member of the System upon the date such person again becomes an employee if he is then under the age of fifty (50) years but any such person who is fifty (50) years or over on such date of re-employment shall not be eligible to become a member of the System.

(e) Membership in the Retirement System shall cease and terminate if:

(1) A member is absent from service in a participating department of a municipality more than sixty (60) consecutive months, or

(2) A member's service in a participating department of a municipality is discontinued and the member withdraws his accumulated deposits, or

(3) A member dies, or

(4) A member becomes an annuitant, provided, however, that during the time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the System (1) on active duty in the Armed Forces of the United States and their auxiliaries and/or in the Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto; or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall not be construed as absent from service in so far as the provisions of this Act are concerned but shall count toward membership service.

#### Revenue

Sec. IV. 1. (a) Each municipality electing to have one or more of its departments participate in this System shall designate by ordinance whether the deposits to be made to the System on account of current service of the employees of each such department shall be at the rate of three percentum (3%), five percentum (5%), or seven percentum (7%) of the earnings of such employees.

(b) Each member shall make deposits to the System at the rate of three percentum (3%), five percentum (5%), or seven percentum (7%) as fixed by the employing municipality; and a participating municipality may increase the rate of deposits by ordinance, but may not decrease the rate of deposits, except as herein-after provided.

(c) The employing municipality by ordinance may provide that earnings of its several employees in excess of Four Thousand, Two Hundred Dollars (\$4,200.00) in any one year, or that such earnings in excess of Four Thousand, Eight Hundred Dollars (\$4,800.00) or any greater multiple of One Thousand, Two Hundred Dollars (\$1,200.00) per year which may be specified in such ordinance, shall be excluded in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the amounts required to be paid in each month by the members as deposits shall exclude payments in excess of one-twelfth ( $\frac{1}{12}$ th) of the maximum annual earnings to be considered for retirement purposes as specified by such ordinance. In the event the municipality does not specify a higher maximum rate of earnings to be considered for deposits and contributions, as above authorized, then in that event earnings of its member-employees in excess of Three Thousand, Six Hundred Dollars (\$3,600.00) in any one year shall not be considered.

(d) As to each and every payroll subsequent to the effective date of participation of the Department in which such person is employed, the employing municipality shall cause to be deducted from the compensation due to each member of the System in the employment of the municipality, the deposit which the member is required under this Act to pay to the System on account of such earnings.

(e) The Treasurer or proper disbursing officer of each participating municipality shall make deductions from salaries of members as provided in this Act, and shall transmit monthly, or at such time as the Board shall designate, a certified copy of the payroll, and the amount specified to be deducted shall be paid to the Board at its home office in cash and, after making a record of all receipts, the said Board shall deposit such receipts to the credit of the Employees Saving Fund, and such Funds shall be deemed as appropriated for use according to the provisions of this Act.

(f) For the purpose of enabling the collection of members' deposits to be made as simple

as possible, the city clerk or city secretary of each participating municipality shall within thirty (30) days after the beginning of each year, make up a list of all employees in its employ, who are members, set out their salaries by the month, and by the year, make a certificate to the correctness of this statement, and file the same with the Director. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified.

(g) The records of the Board shall be open to public inspection and any member shall be furnished with a statement of the amount to the credit of his individual account upon written request, provided that the Board shall not be required to answer more than one such request of a member in any one year.

(h) Repealed by Acts 1965, 59th Leg., p. 1572, ch. 682, § 3.

(i) The rate of contribution required of members of the participating departments of any participating municipality may be reduced from a higher rate of contribution theretofore prescribed by ordinance, to one of the lower rates of contribution authorized by this Act, following an election by secret ballot, conducted under such rules and regulations as may be adopted and promulgated by the Board of Trustees of the System, provided the proposal to reduce the rate of contribution carries by affirmative vote of two-thirds of all the members of the affected participating departments of such city; and provided further that the municipality by ordinance shall so provide. Such reduction in the rate of contribution may be made effective at the beginning of a designated calendar month, provided that the election above required shall have been held and such ordinance shall have been adopted at least ninety (90) days before the date fixed for reduction of contributions, and provided that written notice of such reduction shall have been given to the Director at least sixty (60) days before the date on which such reduction is to be made effective.

2. (a) Each participating municipality shall make normal contributions to the System of a percentage (determined as hereinafter provided) of each payment of earnings made to each member by such municipality and shall make Prior Service contributions to the System of a percentage (determined as hereinafter provided) of each payment of earnings made to each member by such municipality, subject to the limitation that the total of such percentages shall not exceed nine and one-half per centum (9-½%) of earnings in the event the rate of current service deposits required of employees of its participating departments is seven per centum (7%) of earnings; and that the total of such percentages shall not exceed seven and one-half per centum (7-½%), in the event the rate of current service deposits required of employees of its participating departments is five per centum (5%) of earnings; and that the total of such percentages shall not

exceed five and one-half per centum (5-½%) in the event the current service deposit rate prescribed for members of participating departments is three per centum (3%) of earnings. The above percentages for each participating municipality shall be determined annually from the most recent data available at the time of such determination, and shall be certified by the Board to each participating municipality prior to the beginning of each calendar year. Where the municipality has different rates of contribution for employees of different departments, the maximum rate of contribution required of the participating municipality shall be determined by calculations made by the actuary of the average rate (taking into account the number of employees in each bracket) of contribution prescribed for current service deposits of employees of its participating departments. No reduction in contribution rate required of its employees shall reduce the maximum rate of contribution required of a participating municipality. Any participating municipality which has one or more of its departments with a different date of participation from others of its departments, by action of its council may elect to have all of its participating departments considered and treated, for the purpose of determining normal and prior service contribution rates, and for the purpose of determining any period within which the municipality must fund the obligations mentioned in paragraphs (a), (b) and (c) of this subsection, as having a single composite participation date, which composite date shall be determined by the actuary as an average weighted according to the number of members entering the System on the actual dates of participation of the several departments involved.

(b) Each participating municipality shall make payment of normal contributions to the Municipality Current Service Accumulation Fund of the System each month of an amount equal to the per cent of the earnings during such month of the members of the System employed by such participating municipality, which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent: (1) to maintain a reserve in such municipality's account in the Municipality Current Service Accumulation Fund equal to the present and prospective liabilities of such municipality's account in the Municipality Current Service Accumulation Fund, and (2) to amortize over a period of five (5) years the amount by which the present and prospective liabilities of such municipality's account in the Municipality Current Service Accumulation Fund was greater or less than the amount in such account on January 1st of the year preceding the then current year.

"Present and prospective liabilities" as used in this subsection shall mean, at any time, an amount equal to that amount in the Employees Saving Fund standing to the credit of a participating municipality's members at that time

which according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board will eventually be transferred to the Current Service Annuity Reserve Fund, plus such additional sum as shall be determined to be a proportional adjustment for all such amounts in the Employees Saving Fund for which the participating municipality is obligated to provide (out of its Municipality Current Service Accumulation Fund Account) reserves at retirement in a ratio other than one to one.

(c) Each participating municipality shall make payment of Prior Service Contributions to the Municipality Prior Service Accumulation Fund of the System each month of an amount equal to a per cent of the earnings during such month of the members of the System employed by such participating municipality which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent, on the basis of regular interest:

(i) to accumulate in such municipality's account in the Prior Service Accumulation Fund by or before the end of the twenty-fifth year of participation of such participating municipality or by or before the end of the twentieth year from date of allowance by such municipality of any special prior service credits or antecedent service credits pursuant to Articles XV or XVI hereof, whichever date is the later, a sum equal to the reserve required (according to calculations made by the actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) to meet in full all payments which may become due after the end of such period under existing and anticipated prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits, granted by such participating municipality; and

(ii) to provide the amount required according to this Act to be paid during such period under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits granted by such participating municipality.

If the per cent of earnings calculated as above for Prior Service Contributions when added to the per cent of earnings calculated according to the preceding paragraph for normal contributions shall together exceed the maximum contributions prescribed in paragraph (a) of this subdivision, then in such event, the per cent of earnings for Prior Service Contributions shall be reduced a per cent which together with the percentage for normal contributions will equal the maximum contributions prescribed by paragraph (a) of this subsection.

(d) Each participating municipality shall make payment of expense contributions to the System each month at a rate per member of

the System employed by such participating municipality as is set by the Board and certified to all participating municipalities prior to the beginning of each calendar year as being the necessary rate required to provide the excess, if any, of the estimated total administrative expense for the year above the anticipated revenue of the Expense Fund from other sources during the year adjusted for any surplus or deficiency existing at the beginning of the year; provided, however, that such rate shall never exceed Fifty (50¢) Cents per month per member.

(e) On or before the fifteenth day of each month, each participating municipality shall remit or cause to be paid to the System at its office the amounts of the normal contributions, Prior Service Contributions and Expense Contributions due for the preceding month as herein provided.

(f) Unless otherwise provided for and paid by a municipality all contributions of the municipality shall be paid out of the fund from which earnings are paid to the members or out of the General Fund of the Municipality.

#### Method of Financing

Sec. V. All of the assets of the System shall be credited according to the purpose for which they are held to one (1) of eight (8) funds, namely, the Employees Saving Fund, the Municipality Current Service Accumulation Fund, the Municipality Prior Service Accumulation Fund, the Current Service Annuity Reserve Fund, the Prior Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

#### 1. The Employees Saving Fund:

(a) Each participating municipality shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, a sum of money equal to seven percentum (7%), five percentum (5%), or three percentum (3%) of his earnings, as fixed by the ordinance of the participating municipality. In determining the amount earnable by a member in a payroll period, the Board may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from earnings for any period less than a full payroll period, if employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth ( $\frac{1}{10}$ ) of one percentum (1%) of the annual compensation upon the basis of which such deduction is to be made.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to

consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the Board on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) During the time that the United States is in a state of war and for twelve (12) months thereafter, a member of the System (1) in the Armed Forces of the United States or their auxiliaries or in the Armed Forces Reserve of the United States and their auxiliaries or in the service of the American Red Cross, as a result of having volunteered or having been drafted or conscripted thereinto, or (2) in war work as a direct result of having been drafted or conscripted by governmental action into said war work, shall be permitted to deposit each year to the System a sum not to exceed the amount deposited by him to said System during the last year that he was employed as an employee under the provisions of this Act. The sum so deposited by such member and received by the System shall be deposited by said System in the Employees Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds deposited by the member while he was last employed as under the provisions of this Act.

(d) Current interest on member's deposits shall be credited annually as of the thirty-first day of December and shall be allowed on the amount of the accumulated deposits standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year.

(e) Should a member cease to be an employee of a participating department of a municipality except by death or retirement under the provisions of this Act, upon the filing of formal application therefor, such member's accumulated deposits shall be paid to him and his account in the Employees Saving Fund closed.

Following the automatic termination of membership in the System for those members who have been absent from service in some participating department more than sixty (60) consecutive months, the Em-

ployees Saving Fund account of such members shall cease to draw interest.

(f) Should a member die before retirement the amount of his accumulated deposits shall be paid as provided in Section VII of this Act.

(g) Upon the retirement of a member his accumulated deposits shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund.

## 2. Municipality Current Service Accumulation Fund:

The Municipality Current Service Accumulation Fund shall be the Fund in which shall be accumulated all normal contributions made to the Texas Municipal Retirement System by the participating municipalities for the purpose of providing upon the retirement of each member an amount at least equal to such member's accumulated deposits as the municipality's contribution to the reserves for the member's current service annuity.

Contributions to and payments from this Fund shall be made as follows:

(a) All normal contributions payable by participating municipalities shall be paid into the Municipality Current Service Accumulation Fund and shall be credited to the accounts of the respective participating municipalities in such Fund.

(b) Upon the retirement of a member, an amount equal to his accumulated deposits in the Employees Saving Fund, or such greater amount as the participating municipality has undertaken (pursuant to Article XIV) to provide, shall be transferred from the Municipality Current Service Accumulation Fund into the Current Service Annuity Reserve Fund. If the accumulated deposits of such retiring members have accumulated from deposits made while an employee of a single participating municipality, such municipality's account in the Municipality Current Service Accumulation Fund shall be reduced by the amount so transferred. If such accumulated deposits arose from service in more than one participating municipality, the accounts of the involved participating municipalities in the Municipality Current Service Accumulation Fund shall be reduced by the respective amounts chargeable to such participating municipalities.

## 3. Municipality Prior Service Accumulation Fund:

The Municipality Prior Service Accumulation Fund shall be the Fund in which shall be accumulated all prior service contributions made to the Retirement System by the participating municipalities for the purpose of providing the amounts required for payment of prior service annuities; and from which prior service annuities shall be paid to the extent herein provided.

Contributions to and payments from this Fund shall be made as follows:

(a) All prior service contributions payable by participating municipalities shall be paid into the Municipality Prior Service Accumulation Fund and shall be credited to the accounts of the respective participating municipalities in such Fund.

(b) All payments under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits granted by a participating municipality shall be paid from this Fund and charged to such participating municipality's account in this Fund subject to the following: the Board shall have the power to reduce proportionately all payments under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits granted by any participating municipality, at any time and for such period of time as is necessary so that the payments under such prior service annuities in any year shall not exceed the amounts available in such participating municipality's account in the Municipality Prior Service Accumulation Fund for payment of prior service annuities in such year.

(c) Whenever, at the end of any year, the amount accumulated in any municipality's account in the Municipality Prior Service Accumulation Fund shall equal or exceed the reserve required, as of the end of such year, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, to meet all future payments in full under prior service annuities, arising from prior service credits, special prior service credits, and antecedent service credits granted by such participating municipality, then in effect or to become effective thereafter, then

(1) the amount of the reserve required at the end of such year under such prior service annuities as are then in effect shall be transferred from the Municipality Prior Service Accumulation Fund to the Prior Service Annuity Reserve Fund and such municipality's account in the Municipality Prior Service Accumulation Fund shall be reduced by such amount so transferred; and

(2) future payments under such prior service annuities so transferred shall thereafter be paid by the System from the Prior Service Annuity Reserve Fund; and

(3) the payment of prior service contributions to the System by such participating municipality shall be discontinued.

Thereafter, upon retirement of a member with prior service credits, special prior service credits or antecedent service credits granted by such participating municipality the amount of the reserve required as of the effective date of such retirement to meet all future payments in full under such member's prior service annuity shall be transferred from the Municipality Prior Service Accumulation Fund to the Prior Service Annuity Reserve Fund and such municipality's account in the Municipality Prior Service Accumulation Fund shall be reduced by such amount so transferred.

Thereafter, should it be determined, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, that the amount to the credit of such participating municipality's account in the Municipality Prior Service Accumulation Fund at the end of any year is less than the reserve required as of the end of such year to meet all future payments in full under prior service annuities, arising from prior service credits, special prior service credits, or antecedent service credits granted by such participating municipality, to become effective after the end of such year, such municipality shall resume payment of Prior Service Contributions, subject to the limitations of Section IV of this Act, of such percentage as is required to amortize such deficiency over a period of one (1) year.

Whenever all prior service annuities, arising from prior service credits, special prior service credits, or antecedent service credits granted by a participating municipality have become effective and the reserves therefor transferred to the Prior Service Annuity Reserve Fund as provided above, any then remaining balance to the credit of such municipality's account in the Municipality Prior Service Accumulation Fund shall be paid to such municipality, and such municipality's account in the Municipality Prior Service Accumulation Fund shall be closed.

#### 4. Current Service Annuity Reserve Fund:

The Current Service Annuity Reserve Fund shall be the Fund in which shall be held all reserves for current service annuities granted and in force and from which shall be paid all current service annuities and all benefits in lieu of current service annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of service or disability retirement, the accumulated deposits of a retiring member shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund as reserves for the current service annuity purchased by said member's deposits.

(b) An amount equal to the accumulated deposits of each retiring member or

such greater sum as the participating municipality has undertaken to provide shall be transferred, upon such member's retirement, from the Municipality Current Service Accumulation Fund as reserves for an additional current service annuity over and above the current service annuity purchased by such member's deposits.

Transfers and payments from the Current Service Annuity Reserve Fund shall be made as provided in Section VII of this Act, upon the death, restoration to active service or removal from the disability list, of an annuitant retired on account of disability.

5. Prior Service Annuity Reserve Fund:

The Prior Service Annuity Reserve Fund shall be the Fund in which shall be accumulated all transfers from the Municipality Prior Service Accumulation Fund as herein provided. All prior service annuity payments under prior service annuities, the reserves for which have been transferred to this Fund, shall be paid from this Fund. The Board shall have the power to reduce proportionately all payments for prior service annuities payable from this Fund at any time and for such period of time as is necessary so that payments under such prior service annuities in any year shall not exceed the available assets in the Fund in such year.

Transfers from this Fund shall be made as provided in Section VII of this Act, upon the restoration to active service of an annuitant retired on account of disability.

6. Interest Fund:

The Interest Fund is hereby created to facilitate the crediting of interest to the various other Funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund.

If the Board shall find and determine that, as of December 31st of any year, (a) the aggregate market value of the common stocks held by the system plus the amount standing to the credit of the interest reserve account of the Endowment Fund as of said date shall exceed in amount the sum of (b) one hundred twenty per cent (120%) of the then book value of said stocks plus two per cent (2%) of the book value of all other invested assets of the system (excluding common stock) as of said date, then, (c) in such event, the Board may direct that all or part of the amount of such excess may be capitalized and applied to adjust upward the book value of said stocks in accordance with rules and formulas adopted by the Board, and the amount of such adjustment shall be treated as investment income and shall be credited to the Interest Fund along with other investment income, interest and dividends.

Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds, respectively. After interest-bearing funds have been duly credited

with interest for the year in the manner provided by this Act, the Board annually shall transfer all excess earnings from the Interest Fund to one or another of the several special accounts of the Endowment Fund as in its judgment the needs and condition of the system may require.

7. Endowment Fund:

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds and assets accruing to the System which are not specifically required by other Funds established by this Act. The Endowment Fund shall consist of the following special accounts: the interest reserve account; the general reserves account; the distributive benefits account; the perpetual endowment account; and such other special accounts as the Board by resolution may establish.

(a) There shall be credited to the interest reserve account all current interest allocable to the Endowment Fund, and there shall be transferred from the Interest Fund to said account such portion of the excess earnings as in the judgment of the Board may be necessary to provide for transfer to the Expense Fund such amount as is required for the administration and maintenance of the System, and further to provide adequate reserves against insufficient earnings on investments to allow regular interest on Funds entitled thereto under the provisions of this Act. The requirements of this account shall constitute a first charge against excess interest earnings standing to the credit of the Interest Fund at the end of any year.

(b) The general reserves account shall be maintained for maintenance of adequate reserves against special requirements of other Funds of the System; and after the requirements of the interest reserve account of this Fund have been met, the Board may transfer from the Interest Fund to the general reserves account of this Fund such portion of the remaining excess earnings as in its judgment may be needed to maintain the reserves for which this account is established.

(c) After the requirements of the interest reserve account and of the general reserves account of this Fund have been satisfied, the Board may transfer any balance of excess earnings remaining in the Interest Fund at the end of a calendar year to a special account in the Endowment Fund to be denominated the "distributive benefits account." If in the judgment of the Board the amount to the credit of the distributive benefit account at the end of the year is sufficient to warrant such action, the Board may by resolution:

(1) authorize the distribution and payment of all or part of said amount as a distributive benefit to the persons who were annuitants of the System on

the last day of said calendar year in the ratio that the monthly benefit of each such annuitant bears to the total of all annuity payments made by the System for the final month of such year;

(2) authorize the distribution and application of all or part of said amount as supplemental interest earned by, and to be paid and credited to the respective individual accounts of members in the Employees Saving Fund, and to the respective accounts of participating municipalities in the Municipality Current Service Accumulation Fund, in the same manner that current interest was allowed to such accounts and in proportion to the current interest allowed such accounts for such calendar year.

(d) The perpetual endowment account shall be the account in which there shall be deposited and kept such funds, gifts and awards as the grantors thereof may designate as a perpetual endowment for the System.

#### 8. Expense Fund:

The Expense Fund shall be the Fund from which the expenses of administration and maintenance of the System shall be paid. Transfers to and payments from this Fund shall be made as follows:

(a) The Director shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the Board for its review, amendment and adoption.

(b) The amount estimated to be required to meet the expenses of the System shall be paid from the interest reserve account of the Endowment Fund to the extent available. The Board, as evidenced by a resolution of the Board recorded in its minutes, may transfer to the Expense Fund the amount required to cover the expenses as estimated for the year.

(c) If the amount estimated to be required to meet said expenses of the System is in excess of the amount in the interest reserve account of the Endowment Fund, the Board, by a resolution recorded in its minutes, shall assess the estimated additional amount against the participating municipalities in proportion to the number of members as provided in Section IV of this Act.

#### Creditable Service

Sec. VI. 1. (a) Under such rules and regulations as the Board shall adopt, each person who is an employee of a participating department of a participating municipality on the effective date of participation of such department and who becomes a member on such effective date shall be entitled to receive credit

for "prior service" as defined in this Act. Any person who has been an employee of such a participating municipality prior to the effective date of participation of such municipality, but who is not in the service of such municipality on the effective date of such municipality's participation, shall be entitled to receive credit for "prior service" as defined in this Act, if he again becomes an employee of such participating municipality within five (5) years after the effective date of such municipality's participation and becomes a member as of the date of such reemployment and continues as an employee of a participating department of such municipality for a period of five (5) consecutive years.

(b) The governing body of a municipality may by ordinance direct that each of its employees who is serving in a public hospital, utility or other public facility which the municipality is operating as successor to, or which the municipality has otherwise acquired from a county, special district, or other public corporation or agency of government, shall be awarded and allowed prior service credit for the total number of months prior to date of participation during which such employee was employed in such hospital, utility or other facility during the period of its operation by the said predecessor governmental units or agencies as well as during the period of its operation by the participating municipality; and in such event, the total period of such employment for which such employee is allowed prior service credit hereunder shall be considered service rendered to the participating municipality for purposes of this Act.

In event any participating municipality subsequent to date of participation, by contract, purchase or by legal succession shall acquire and become the operator of a public hospital, utility or other public facility theretofore operated by a county, special district, or other public corporation, the governing body of the participating municipality may by order direct that persons who were employed in such hospital, utility or other facility at the time acquisition of or succession to the same by the participating municipality, and who enter or did enter employment of the participating municipality at that time, shall be allowed prior service credit for the total number of months during which such employee was employed in such hospital, utility or other public facility during the period of its operation by the predecessor counties, districts, and/or other public corporations.

2. Each member entitled to receive credit for "prior service" shall file a detailed statement of all prior service for which he claims credit with the City Clerk or City Secretary of the municipality to which such service was rendered.

3. Subject to the above provisions and to such other rules and regulations as the Board may adopt, each participating municipality shall verify, as soon as practicable after the

filing of such statements of service, the service therein claimed, and shall certify to the Board the length of "prior service" for which credit is allowed to each employee-member and the "average prior service compensation" of each such employee-member.

4. Upon receipt of such certification from the participating municipalities the Board shall issue prior service certificates certifying to each member the length of "prior service" with which he is credited, his "average prior service compensation" and his "prior service credit" as herein defined. So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any member or participating municipality may, within one (1) year from the date of issuance or modification of such certificate, request the Board to modify or correct such prior service certificate.

When membership ceases, such prior service certificate shall become void. Should a person whose membership has terminated again become a member, he shall enter the System as a member not entitled to credit for prior service.

5. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the current service rendered by him since he last became a member, and, also, if he has a prior service certificate which is in full force and effect, the length of the service credited on his prior service certificate.

6. "Prior Service Credit" shall mean an amount equivalent to the accumulation at interest of a series of equal monthly payments of ten per cent (10%) of a member's "average prior service compensation" for the number of months of prior service certified to in such member's Prior Service Certificate. Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not to be allowed for parts of a year.

7. "Accumulated Prior Service Credit" shall mean the "prior service credit" allowed a member as of the effective date of becoming a member, accumulated at regular interest from such date until the effective date of such member's retirement.

8. Repealed by Acts 1969, 61st Leg., p. 1146, ch. 371, § 8.

#### Benefits

Sec. VII. 1. Service Retirement Eligibility;

(a) Any member, after one (1) year from the effective date of his membership, shall be eligible for service retirement who (1) shall have attained the age of sixty (60) years and shall have completed at least fifteen (15) years of creditable service, or (2) shall have complet-

ed twenty-eight (28) years of creditable service.

(b) In any participating municipality which hereafter elects to participate in the System, and in those presently participating municipalities which by action of the governing body shall hereafter elect to provide the additional coverage allowed by this paragraph, any member of the System, after one year from the effective date of his membership, shall also be eligible for service retirement who shall have attained the age of fifty (50) years, and shall have completed at least twenty-five (25) years of creditable service in the municipality electing to provide the coverage allowed by this paragraph, and in any such participating municipality as shall have elected to provide the additional coverage allowed by this paragraph, any member who is an employee of such participating municipality at the time of his completion of at least twenty (20) years of creditable service who may withdraw from service shall continue to be a member despite the fact that his absence from service may exceed sixty (60) consecutive months, and shall become eligible for service retirement at attainment of a prescribed minimum service retirement age.

(c) Application for service retirement shall be made to the Board setting forth the date the member desires his retirement to become effective provided: (1) such application shall be executed and filed at least thirty (30) and not more than ninety (90) days prior to the date on which such retirement is to become effective; (2) the effective date specified in the application shall be the last day of a calendar month, and shall not be a date preceding the termination of the member's employment with an employing municipality.

(d) With the provision that no retirement shall be effective within one (1) year after the effective date of his membership, each member shall be retired from employment by all municipalities on the last day of the calendar year in which the age of sixty-five (65) is attained, or upon the last day of the calendar year in which he completes fifteen (15) years of creditable service, whichever shall last occur; provided, however, that in exceptional cases and for substantial cause such retirement may be deferred by mutual consent of the member and the employing municipality from year to year for a period of not to exceed one (1) year at any time, but in the case of any member who was under the age of fifty (50) years on the effective date of last becoming a member, such member's retirement shall not be so deferred beyond the last day of the calendar year in which he attains the age of seventy (70) or the last day of the calendar year in which he completes fifteen (15) years of creditable service, whichever shall last occur.

(e) Any member who has accepted service retirement shall be ineligible and disqualified to resume or continue service in any participating municipality.

## 2. Standard Benefit on Service Retirement;

(a) A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be an allowance payable in equal monthly installments during the lifetime of the member, and in the event of his death before sixty (60) monthly payments of such benefit have been made, such payments shall continue to be paid to the member's beneficiary until the remainder of the sixty (60) monthly payments have been made. The "standard service retirement benefit" of a member shall consist of (1) a current service benefit which is the actuarial equivalent of his current service annuity reserve, and (2) a prior service benefit to which his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit, if any, entitles him under the provisions of this Act.

(b) The current service annuity reserve of the member shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum, from the Municipality Current Service Accumulation Fund, equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(c) If he has a Prior Service Certificate, Special Prior Service Certificate, or Antecedent Service Certificate in full force and effect, the prior service benefit shall be the actuarial equivalent of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit at the time of retirement; subject, however, to the power of the Board, upon recommendation of the actuary, to reduce payments for prior service annuities as provided in Section V of this Act.

## 3. Optional Service Retirement Benefits;

(a) In lieu of the standard service retirement benefit allowable under the preceding subsection, and provided that he shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his current service benefit in a current service annuity payable to the member during his lifetime, but with the provision that:

Option One. Upon his death, the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option Two. Upon his death, one-half of the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nomi-

nate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option Three. In the event of his death before one hundred twenty (120) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option Four. Some other benefit or benefits may be paid either to the member, or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, together with the current service annuity of the member, shall be certified by the actuary to be the equivalent in actuarial value of the current service annuity reserve to which the member is entitled at the date fixed for his retirement.

(b) Any member who makes an effective election to have his current service benefit paid in accordance with Option One, Option Two, Option Three or Option Four, shall likewise receive his prior service benefit, if any, in an adjusted annuity payable upon the same conditions and to the same beneficiary as that selected for his current service benefit, but with the further proviso that all prior service benefits shall be subject to reduction by the Board under the circumstances provided for in Section V of this Act.

## 4. Deferred Service Retirement with Optional Selection;

Any member who has accumulated sufficient creditable service and who is otherwise qualified for service retirement shall have the right to apply in writing (on such forms as the Board may prescribe) for "deferred retirement" under this subsection, and continue in service of a participating municipality, accumulating additional creditable service, upon the terms and with the effect hereinbelow provided.

In the application for deferred retirement, the member shall apply for retirement to be effective on or before the last day of the calendar year in which he reaches seventy (70) years of age, and shall select the standard benefit or one of the optional benefits authorized under Subsection 3, above, and designate the beneficiary of the optional benefit selected. After filing of the application for deferred retirement, the member may continue in the service of a participating municipality, and he may thereafter retire at the end of any month, by filing an amended application in writing for commencement of payment of benefits with the Board at least thirty (30) days before the amended effective date of retirement; or, if such member shall die while in service, or before payments of his deferred annuity have begun, he shall be considered to have retired ef-

fective as of the last day of the calendar month preceding the month in which his death occurs, and his optional selection shall be effective as of that date. Any such member who has applied for deferred retirement may from time to time, prior to beginning of payments of his annuity to him, file an amended application, changing his written selection of optional allowance and/or designated beneficiary. A member who executes an application for deferred retirement will automatically be retired on the last day of the calendar year in which he becomes seventy (70) years of age. A member who is entitled to have applied for deferred retirement hereunder, but who has not executed and filed an application therefor, shall in case of his death be considered as having retired on a standard benefit effective at the end of the calendar month preceding that in which he dies; or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

#### 5. Disability Retirement Eligibility;

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with less than ten (10) years of creditable service may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is the direct result of injuries sustained subsequent to the effective date of membership by external and violent means as a direct and proximate result of the performance of his duties, that such incapacity is likely to be permanent and that such member should be retired.

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with more than ten (10) years of creditable service, who is not eligible for service retirement, may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

#### 6. Standard Disability Retirement Benefits;

Upon retirement for disability a member shall receive a disability retirement benefit consisting of a current service annuity, which shall be the actuarial equivalent of his current service annuity reserve, and a prior service annuity to which his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, if any, entitles him under the provisions of this Act.

(a) His current service annuity reserve shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum from the Municipality Current Service Accumulation Fund equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(b) If he has a Prior Service Certificate, Special Prior Service Certificate, or Antecedent Service Certificate in full force and effect, the prior service annuity shall be the actuarial equivalent of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit at time of retirement. Upon the recommendation of the actuary, the Board shall have the power to reduce payments for prior service annuities as provided in Section V of this Act.

#### 7. Requirements and Conditions Applicable to Disability Benefits;

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board. Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

(a) Should the Medical Board report and certify to the Board that such disability annuitant is no longer physically or mentally incapacitated for the performance of duty, or that such disability annuitant is engaged in or is able to engage in a gainful occupation, and should the Board by a majority vote concur in such report, then his allowance shall be discontinued.

(b) Should a disability annuitant under the age of sixty (60) years be restored to

active service in a participating department of a participating municipality, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his current service annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Municipality Current Service Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund at retirement and the reserves under his prior service annuity, if any, in the Prior Service Annuity Reserve Fund at that time shall be transferred to the Municipality Prior Service Accumulation Fund. Upon restoration to membership, any Prior Service Certificate, Special Prior Service Certificate or Antecedent Service Certificate, on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the current service annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

#### 8. Return of Deposits Upon Other Terminations;

Should a member cease to be an employee of a participating department except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to eligibility of the member to deferred retirement as hereinafter defined, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the permanent endowment account of the Endowment Fund.

#### Administration

Sec. VIII. 1. This System shall be construed to be a Trust and shall be administered by a Board of Trustees consisting of six (6) persons, each of whom shall be designated as a trustee. Such Board shall consist of three (3) trustees, each of whom shall be a chief executive officer, chief finance officer, or other officer, executive or department head of a municipality, and each such trustee shall be designated as an executive trustee; and three (3) trustees each of whom shall be an employee of a municipality and shall be designated as an employee trustee.

The members of the Board of Trustees shall be appointed by the Governor, with the advice and consent of the Senate, and shall hold office for a term of six (6) years; provided, however, that the members of the Board of Trustees heretofore appointed whose terms expire on December 31, 1949 and December 31, 1950 shall continue to be members of the Board of Trustees, and their terms of office shall expire December 31, 1950, and the members of the Board of Trustees whose terms expire December 31, 1951 and December 31, 1952 shall continue to be members of said Board of Trustees and their terms of office shall expire December 31, 1952, and the Governor shall appoint two (2) additional members of said Board of Trustees whose terms shall expire December 31, 1954; and thereafter appointments shall be for a term of six (6) years. Appointments to fill vacancies caused by death or resignation shall be for the unexpired term only. Each such successor trustee shall be appointed from a participating municipality and, to the extent possible, such trustees shall be from different municipalities. A person appointed as a trustee shall qualify as a trustee upon the presentation to the Board of a certified copy of an oath of office taken before the clerk of the municipality by which such person is employed.

Any trustee after the original trustees shall be disqualified immediately upon termination of employment or office with all participating municipalities or upon any change in status which removes any such trustee from employment or office within the group which he represents. All trustees shall serve without compensation, but shall be reimbursed for any reasonable traveling expenses incurred in attending meetings of the Board and for the amount of any earnings withheld by any employing municipality because of attendance of any Board meeting. Each trustee shall be entitled to one (1) vote on any and all actions before the Board for consideration at any Board meeting, and at least four (4) concurring votes shall be necessary for every decision or action by the Board at any of its meetings.

2. The Board shall have, in addition to all other powers and duties arising out of this Act not otherwise specifically reserved or delegated to others, the following specific powers and

duties and is hereby authorized and directed to:

(a) Hold regular meetings in March, June, September and December of each year, and such special meetings at such other times as may be called by the Director upon written notice to the trustees. Five (5) days notice of each special meeting shall be given to each trustee, unless such notice is waived. All meetings of the Board shall be open to the public and shall be held in the offices of the Board or in any other place specifically designated in the notice of any meeting.

(b) Consider and pass on all applications for annuities and benefits, authorize the granting of all annuities and benefits and suspend any payment or payments, all in accordance with the provisions of this Act.

(c) Certify all normal contribution rates, all prior service contribution rates and the current rate of interest as approved in writing by the actuary and notify all participating municipalities thereof.

(d) Obtain such information from any member or from any participating municipality as shall be necessary for the proper operation of the System.

(e) Establish an office in either the Capital City or in one of the participating municipalities. All books and records of the System shall be kept in such office.

(f) Appoint a Director for the purpose of managing this municipal System, investing the Funds and carrying out the administrative duties of the System, appoint an actuary for the purpose of carrying out all the necessary actuarial requirements of the System, appoint an attorney, appoint a Medical Board and employ such additional actuarial, clerical, legal, medical and other assistants as shall be required for the efficient administration of the System; and determine and fix the compensation to be paid.

(g) Have the accounts of the System audited at least annually by a Certified Public Accountant.

(h) Submit an annual statement to the governing body of each municipality and to any member, upon request, as soon after the end of each calendar year as possible. Such statement shall include at least the following: a balance sheet showing the financial and actuarial condition of the System as of the end of the calendar year; a statement of receipts and disbursements during each year; a statement showing changes in the asset, liability, reserve and surplus accounts during the year; and such additional statistics as are deemed necessary for a proper interpretation of the condition of the System.

(i) The Board annually on December 31 shall allow regular interest on the mean amount in the Current Service Annuity Reserve Fund for the year then ending and shall allow regular interest on the mean amount in the Municipality Prior Service Accumulation Fund for the year then ending and shall allow regular interest on the mean amount in the Prior Service Annuity Reserve Fund during such year and shall allow current interest as defined in Section II of this Act on the amount in the Municipality Current Service Accumulation Fund at the beginning of such year and on the amount in the Endowment Fund at the beginning of such year and on an amount in the Employees Saving Fund equal to the sum of the accumulated deposits standing to the credit at the beginning of such year of all members included in the membership of the System on December 31 of each such year, before any transfers for retirement effective December 31 of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the Board on December 31 of each year from moneys of the System held in the Interest Fund.

(j) Accept any gift, grant or bequest of any money or securities for the purposes designated by the grantor, if such purposes are specified as providing an endowment or retirement benefits to some or all of the participating employees or annuitants of this System, or if no such purposes are designated, for deposit to the credit of the Endowment Fund.

(k) Determine the limitations on the amounts of cash to be invested in order to maintain such cash balances as may be deemed advisable to meet payments of benefits and expenses, and invest the remaining available cash in securities in accordance with Subsection (g) of this Section.

(l) Keep in convenient form such data as shall be necessary for all required calculations and valuations as required by the actuary and keep a permanent record of all the proceedings of the Board.

(m) The Board shall have power to incur indebtedness and to borrow money upon the faith and credit of the System for the purpose of paying and providing for the payment of the expenses incident to the operation of the System, and to renew, extend or refund such indebtedness heretofore incurred or hereafter incurred, and for such purposes to issue and sell the negotiable promissory notes or negotiable bonds of the Texas Municipal Retirement System, maturing within twenty (20) years from date of issuance, and bearing interest at a rate not to exceed six per cent (6%) per annum; and such notes or bonds shall be a charge against and shall be payable from the Expense Fund of the Sys-

tem, hereinabove provided for, but shall expressly provide that the same shall never be held or considered to be an obligation of the State of Texas; but the total indebtedness against the Express Fund of the System shall never exceed at any one time the sum of Seventy-five Thousand Dollars (\$75,000).

(n) Establish such rules and regulations not inconsistent with the other provisions of the Act and generally carry on such other reasonable activities as are deemed necessary or desirable for the efficient administration of the System.

3. The Director shall be in charge of the technical administration of the System and shall have such additional powers and duties as are properly delegated by the Board.

4. The Board shall designate an actuary who shall be the technical advisor of the Board on matters regarding the operation of the Funds created by the provisions of this Act and shall perform such other duties as are required in connection therewith.

As soon as practicable after the establishment of the System, and at least once in each five (5) year period thereafter, the actuary shall make such general investigation of the mortality, and service experience of the members and annuitants of the System as he shall recommend and on the basis of such investigation, he shall recommend for adoption by the Board such tables and rates as are required.

On the basis of such tables and rates as the Board shall adopt, the actuary shall:

(a) Calculate the normal contribution rate for participating municipalities;

(b) Calculate the prior service contribution rate for participating municipalities;

(c) Calculate the current interest rate;

(d) Certify the amounts of each annuity and benefits granted by the Board; and

(e) Make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

4. The Board shall designate an attorney who shall be the legal adviser to the Board and shall represent it in all litigation.

5. The Board shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The physicians so appointed by the Board shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board its conclusion and recommendation upon all the matters referred to it.

6. The assets of the system in excess of the amount of cash required for current operations as determined by the Board, shall be invested and reinvested in the following types of securities:

(a) Interest-bearing bonds or other evidences of indebtedness: of the State of Texas, or of any county, school district, city or other municipal corporation within the State of Texas; of the United States or of any authority or agency of the United States, or any such securities which are guaranteed as to the payment of principal and interest by the United States or by any authority or agency of the United States.

(b) Corporate bonds or debentures of any company incorporated in the United States which are rated A or better by one or more nationally-recognized rating services to be designated by the Board, or bonds or debentures of any company whose stocks are eligible hereunder as investments for the system.

(c) Preferred stocks and common stocks of companies incorporated within the United States, which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase of such securities and which, except for bank and insurance company stocks, are listed upon an exchange registered with the Federal Securities and Exchange Commission or its successors. Provided, however, that not more than two per cent (2%) of the assets of the system be invested in stocks, bonds and debentures of any one corporation, nor shall more than five per cent (5%) of the voting stock of any one corporation be owned by the system. In making each and all such investments the Board shall exercise the judgment and care under the circumstances which men of prudence, discretion and intelligence exercise in the management of their own affairs, taking into consideration not only the probable income derivable from such securities but as well the probable safety of the capital investment.

The Board shall have full power to sell, assign, exchange, or trade and transfer any of the securities in which the funds of the system at any time may be invested, and to use or reinvest the proceeds as, in the Board's judgment, the needs of the system require.

7. All money received by the Board shall immediately be deposited with a depository for the Account of the System. All disbursements shall be made only upon vouchers signed by the person or persons designated for such purpose by resolution of the Board, and the depository is hereby authorized to pay the vouchers or checks so signed. The depository shall accept all warrants so signed and shall be released from liability for all payments made thereon. Checks or warrants shall be drawn only upon proper authorization by the Board,

properly recorded in the official minute books of the meetings of the Board. All securities of the System when received, shall be deposited in Trust with a depository designated by the Board and the depository shall provide adequate safe deposit facilities for their preservation. The assets of the System shall be invested as one Fund, and no particular person or municipality shall have any right in any specific security or in any item of cash other than an undivided interest in the whole, as set forth in the provisions of this Act.

#### Depositories

Sec. IX. In handling the funds of the System created by this Act, the Board shall have and is hereby given all the power, authority and duties granted the State Depository Board and shall designate depositories to qualify and serve such System in accordance with the provisions of Chapter I, Title 47, Revised Civil Statutes of Texas of 1925, together with all amendments thereto.<sup>1</sup>

<sup>1</sup> Article 2525 et seq.

#### Merger With Other Systems

Sec. X. The merger of other Pension Systems for municipal employees is hereby authorized upon terms to be fixed by the Board of Trustees of this System and trustees of such other system and such merger has been approved by a majority vote of such other system.

#### Consolidation With Firemen's Relief Pension Fund

Sec. XI. When the members of the Fire Department of a municipality by their election and with the consent of their employer become participants of this municipal system upon the voluntary application of the employing municipality, the Funds, if any, of the "Firemen's Relief and Retirement Fund" of such municipality and all future payments to such Fund may be transferred to the Board and credited to its Prior Service Reserve Fund.

All distributions and payments which could be made annually to a "Firemen's Relief and Retirement Fund" for the firemen of any participating municipality, if the firemen of such municipality were not covered by this or some other Pension or Retirement System or if such participating municipality has or had taken the proper steps to secure such Funds, shall be paid over to the Board and credited for the benefit of such firemen as the Board shall direct.

#### Miscellaneous

Sec. XII. 1. Each member shall, by virtue of the payment of the deposits required to be paid to this System, receive a vested interest in such deposits.

2. Venue of any action by or on behalf of Texas Municipal Retirement System or the Board of Trustees of Texas Municipal Retirement System against any participating municipality, or against any officer or Board of Officers of any participating municipality to compel accounting by such municipality or by such

officer or officers of such participating municipality for any sums due by the participating municipality to the System, or due to the System as contributions of participants, or to require withholding of and accounting for sums due from participants, shall lie in Travis County, Texas, as well as in the county in which such municipality is situated.

3. The assets of the System shall be invested as one (1) Fund, and no particular person, group of persons or entity has any right in any specific security or property or in any item of cash other than an undivided interest in the whole as specified in the provisions of this Act as it now exists or is subsequently amended.

4. All annuities and other benefits payable under the provisions of this Act and all accumulated deposits of members in this system shall be exempt from all state, county or municipal taxes, shall be unassignable and shall not be subject to execution, garnishment or attachment.

5. Any person who shall knowingly make any false statement in any report or application to the System, in an attempt to defraud the System, or who shall knowingly make a false certificate of any official report to the System, shall be guilty of a misdemeanor and shall be punished therefor by fine of not less than One Hundred Dollars (\$100) and not more than One Thousand Dollars (\$1,000), or by confinement in jail for a term of not less than thirty (30) days nor more than one (1) year, or by both such fine or imprisonment.

6. The Board shall require and secure at the expense of the System such Fidelity Bond as it may deem proper for the faithful performance of the duties of the Director.

#### Supplemental Benefits Fund

##### Sec. XIII. 1. Establishment;

Upon the terms and conditions hereinafter stated, the Board of Trustees shall establish in addition to the several Funds provided for in Section V, an additional and separate fund to be known as the "Supplemental Benefits Fund" to provide for the payment of supplemental benefits, as hereinafter provided, for employees of municipalities electing to participate in said Fund who are forced to retire because of disabilities sustained as a direct and proximate result of injuries sustained in the course of their employment.

##### 2. Participation in the Fund;

(a) Any municipality which has elected to have one or more of its departments participate in this System may elect to have the employees of all such departments participate in and be covered by the Supplemental Benefits Fund. Such election is authorized to be made in any manner authorized by Subsection 1 of Section III concerning participation in the System.

(b) A municipality which once elects to participate in the Supplemental Benefits Fund may refuse to add new departments or new employees, but shall never discontinue participa-

tion in the Fund as to members who are covered into the Fund.

(c) Membership in the Fund shall be terminated by cessation of membership in the System.

3. Contributions to the Supplemental Benefits Fund;

Each municipality which elects to have participation in the Supplemental Benefits Fund shall contribute to that Fund, in addition to normal contributions and prior service contributions required pursuant to Section IV, such additional percentage of each payment of earnings as may be fixed by the Board, upon the recommendation of the actuary, as necessary to accumulate the reserves needed to pay the anticipated benefits which may accrue during the first year of existence of the Fund, and from year to year thereafter, provided the rate of contribution to the Fund shall not exceed one-half of one percentum ( $\frac{1}{2}\%$ ) of the earnings of employees of such municipality who are covered under the Fund; provided, further, that the rate of contribution to the Supplemental Benefits Fund shall not be subject to the limitation on contributions prescribed by Subsection 2 of Section IV, but shall be in addition thereto.

4. Supplemental Benefits for Covered Employees;

(a) Any covered employee of a municipal department participating in the Supplemental Benefits Fund may be retired with a supplemental disability annuity as herein authorized, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated so as to be unable to engage in a gainful occupation, and provided the Board shall find that such incapacity is the direct result of injuries sustained subsequent to effective date of his coverage in the Supplemental Benefits Fund as a direct and proximate result of the performance of the duties of his employment, and that such incapacity is likely to be permanent.

If the member is not entitled to service retirement, the supplemental disability annuity shall be an amount which, together with the amount of his standard disability benefit, will equal one-half of his average monthly earnings for service rendered as an employee of a participating department of the municipality during the sixty (60) months immediately preceding the date of his said injury, or if there be less than sixty (60) months of such service, the average earnings computed for the number of months of such service during such sixty (60) months period. If the member is entitled to service retirement, the supplemental disability annuity shall be an amount which, together with the amount of the standard service retirement benefit to which he is entitled, shall equal one-half of his average monthly earnings for service rendered as an employee of a participating department of the municipality dur-

ing the sixty (60) months immediately preceding the date of said injury, or if there be less than sixty (60) months of such service, the average earnings computed for the number of months of such service during such sixty (60) months period. Provided, however, that in calculating the average monthly earnings upon which the supplemental benefit shall be determined, earnings in any month in excess of those on which the member was required to make contributions to the System shall be disregarded.

(b) Supplemental disability benefits payable from the Supplemental Benefits Fund shall be subject to the same conditions prescribed for standard disability benefits, and if the standard disability benefit is discontinued or suspended for any reason, the supplemental disability benefits from the Supplemental Benefits Fund shall likewise be discontinued or suspended.

(c) The Board shall have the power to reduce proportionately all supplemental benefits payable from the Supplemental Benefits Fund at any time and for such period of time as is necessary so that payments of supplemental benefits from such Fund in any year shall not exceed the available assets in the Fund in such year.

5. Operative Date of the Fund;

The Supplemental Benefits Fund shall not become operative until a sufficient number of municipalities elect to participate in the Fund to cover into the Fund at least four thousand members of the System; the Board shall determine the operative date, and shall notify municipalities which have elected to participate the effective date of their participation in the Fund, which shall not precede the operative date of the Fund as herein provided. Municipalities electing to participate in the Fund shall begin contributions to the Fund from the effective date of participation in the Fund. Municipalities electing to participate after the operative date of the Fund shall begin participation therein on the first day of the second calendar month after notice to the Board of its election to enter the Fund.

6. Management of the Fund;

The Supplemental Benefits Fund shall be managed, controlled and handled as are other funds of the System. Regular interest shall be allowed by the Board on December 31 in each year on the mean amount in the Fund during the year, and the sum so allowed shall be transferred to the Supplemental Benefits Fund from the Interest Fund at the time and in the manner in which interest is allowed to other interest-bearing funds of the System.

Optional Provision for Increased Current Service Annuities

Sec. XIV. Any participating municipality electing to do so may provide for an increased current service annuity reserve at retirement

of employees of such municipality, upon the following terms and conditions:

1. The council by ordinance may provide that for each month of current service thereafter rendered by its participating employees, the city will contribute out of its account in the Municipality Current Service Accumulation Fund to the current service annuity reserve of each such member if he retires and at the time of his retirement a sum that is either (at the option of the employing municipality) one hundred fifty per centum (150%) of the accumulated deposits of the member for such month of employment, or two hundred per centum (200%) of the member's accumulated deposits for such month.

2. In the event an employing municipality elects to contribute toward a current service annuity for its employees at the increased rate above provided, the current service annuity reserve of each such employee-member at his retirement (whether for service or for disability) shall consist of:

(a) The accumulated deposits credited to his account in the Employee's Saving Fund at the time of his retirement, which deposits shall be transferred at such time to the Current Service Annuity Reserve Fund; and

(b) An additional sum which shall be the aggregate of the following: (i) an amount equal to the accumulated deposits made by the member during each month of current service in which the participating municipality for which such service was rendered has undertaken to match such deposits on an equal basis; plus (ii) an amount one and one-half times the member's accumulated deposits arising out of periods of employment during which the employing participating municipality had elected to contribute at one hundred fifty per centum (150%) of the deposits made by the employee-member; plus (iii) an amount twice the member's accumulated deposits arising out of periods of employment during which the employing participating municipality had elected to contribute as above provided on a basis of two hundred per centum (200%) of the deposits made by the employee-member.

Upon retirement of any such employee-member, such aggregate sum shall be transferred from the Municipality Current Service Accumulation Fund into the Current Service Annuity Reserve Fund, and the account of the affected participating municipality in the Municipality Current Service Accumulation Fund shall be reduced by the amount so transferred; if the accumulated deposits of the member arose

from service rendered in more than one participating municipality, the accounts of the affected participating municipalities in the Municipality Current Service Accumulation Fund shall be reduced by the respective amounts chargeable to such participating municipalities.

3. The current service annuity of any member affected by this section shall mean the annuity, actuarially determined of the total of his own transferred deposits, and those transferred out of the Municipality Current Service Accumulation Fund on account of his service.

4. In the event any participating municipality elects to provide for the greater current service annuities herein authorized, it shall make normal contributions monthly to the System in the manner prescribed by Paragraph (b), Subsection 2 of Section IV hereof, but as to such municipality the term "present and prospective liabilities" shall include the liabilities defined in Section IV hereof and the additional amounts arising out of its undertaking to contribute (at retirement) one hundred fifty per centum (150%) and two hundred per centum (200%) of its members' accumulated deposits for the periods designated by the municipality.

5. Any participating municipality which has elected for any year to contribute (at retirement) one hundred fifty per centum (150%) of its members' accumulated deposits arising from service during such period, shall be liable for total contributions at a rate per centum of earnings which shall not exceed two per centum (2%) more than the otherwise applicable maximum rate prescribed by Paragraph (a), Subsection 2 of Section IV hereof, and for any year in which the municipality has elected for any year to contribute (at retirement) two hundred per centum (200%) of its members' accumulated deposits arising from service during such year, the municipality shall be liable for total contributions at a rate per centum of earnings which shall not exceed four per centum (4%) more than the otherwise applicable maximum rate prescribed by Paragraph (a) of Subsection 2 of Section IV.

6. No municipality shall undertake to make the increased contributions allowed under this section until it shall have been a participating municipality of the System for at least three calendar years. The increased rate of contributions authorized hereunder shall only be made effective at the beginning of a calendar year.

7. A participating municipality may revert to current-service contributions on an equal-matching basis, or reduce from two hundred per centum (200%) matching to one hundred fifty per centum (150%) matching of deposits as to any service rendered by its members or after the 1st day

of January of the ensuing calendar year after adoption of an ordinance terminating (as to such future service) contributions at the higher percentages allowed under this Section; provided such ordinance shall have been adopted at least ninety (90) days (and notice of such reduction is given by the municipality to the Director of the System at least sixty (60) days) before the 1st day of January on which it is proposed to reduce the rate of contributions under this Section.

**Optional Provision for Special Prior Service Credits**

Sec. XV. Any participating municipality electing to do so may provide for "special prior service credits" to be allowed as to employees of such municipality retiring subsequent to the effective date of the undertaking of the municipality to provide such increased credits, upon the following terms and conditions:

(1) The Council by ordinance may provide that in addition to the "prior service credit" to be allowed each of its employees holding a prior service certificate which is in effect on the last day of the calendar year in which such proposed change is authorized by the Council, a "Special Prior Service Credit" shall be granted which shall be an amount equivalent to the accumulation at interest of a series of equal monthly payments of:

(a) Two and one-half per cent ( $2\frac{1}{2}\%$ ) of the member's "average prior service compensation" for the number of months of prior service certified to in such member's prior service certificate; or

(b) Five per cent (5%) of the member's "average prior service compensation" for the number of months of prior service certified to in such member's prior service certificate.

The accumulation above provided for shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowable on the accumulation at the beginning of each such twelve (12) months period and is not to be allowed for parts of a year.

(2) No municipality shall undertake to allow the special prior service credits authorized by the preceding paragraph until it shall have been a participating municipality of the System for at least three (3) calendar years; and no such undertaking shall be permitted, and shall not become effective, until it shall have been determined and certified by the actuary of the System that all obligations arising from the "prior service credits" and special prior service credits previously allowed by the municipality plus the "special prior service credits" proposed to be granted can be funded along with other obligations undertaken by the municipality under this

Act, within the applicable maximum total contribution rate by or before the end of the twenty-fifth year from date of participation, or by or before the end of the twentieth year from and after the effective date of the special prior service credits proposed to be granted, whichever date is later.

(3) No "special prior service credits" shall be permitted to be granted under this Section if the result thereof would be to produce greater benefits for completed service than would be provided for current and future service rendered by an employee of the participating municipality for an equivalent period of time and upon the same earnings.

(4) No special prior service credits shall be permitted unless and until the proposal is approved by the Board as conforming to the requirements stated in this Act.

(5) Each employee member entitled to special prior service credit shall be given a "Special Prior Service Certificate" stating the amount of any special prior service credit allowed him pursuant to this Section. In event membership of such employee is terminated such special prior service certificate shall become void.

(6) "Accumulated Special Prior Service Credit," as used in this Act, shall mean the "special prior service credit" allowed a member as above provided, accumulated at regular interest from the effective date of becoming a member until the effective date of such member's retirement.

**Optional Provision for Antecedent Service Credits**

Sec. XVI. Subject to the terms and conditions hereinafter stated, any participating municipality electing to do so may undertake to grant antecedent service credit to those persons in its employment at the effective date of the municipality's election to provide such credit.

(1) Antecedent service credit may be granted for the period beginning at the municipality's date of participation and ending on the earliest date subsequent thereto as of which the municipality has increased its matching ratio for current service in accordance with Section XIV hereof, without having then or thereafter granted corresponding antecedent service credits equal to the increase in the rate of matching made effective on said date. The period of time described above is referred to hereafter as an "antecedent service period."

(2) The Council by ordinance may provide that the municipality will grant antecedent service credit to those persons who are employees of the municipality at the date such undertaking is designated to become effective, which shall be a charge against the prior service accumulation account of the municipality.

(3) "Antecedent Service Credit" shall mean an amount equal to fifty per cent (50%), or at

the election of the participating municipality (made in such ordinance or subsequent amendment thereto), one hundred per cent (100%) of the accumulated deposits of the member at the end of the antecedent service period for which said "Antecedent Service Credit" is allowed.

(4) "Accumulated Antecedent Service Credit" shall mean the "Antecedent Service Credit," determined as of the end of antecedent service period in accordance with this section, and accumulated at regular interest from such date until the effective date of such member's retirement.

(5) The Council by ordinance shall determine whether antecedent service credit shall be allowed, and shall designate the date such undertaking is to become effective provided that the date selected shall be the end of any calendar year after three (3) full years of participation by the municipality.

(6) Each employee member entitled to antecedent service credit shall be given an "Antecedent Service Certificate" stating the amount of his antecedent service credit allowed pursuant to the ordinance adopted by the municipality, and such certificate shall state that in the event membership in the System ceases, such certificate shall become void, and that if the member thereafter returns to employment of any participating municipality, he shall not be entitled to such antecedent service credit."

(7) No antecedent service credit shall be permitted, and no provision therefor shall become effective, unless and until the proposal is approved by the Board as conforming to requirements of this Act. And the Board shall not approve the allowance of antecedent service credit by any participating municipality until it shall have been determined and certified by the actuary of the System that all obligations arising from the antecedent service credits proposed, together with all prior service credits and special prior service credits, if any, granted by the municipality can be funded by the municipality within its maximum total contribution rate by or before the end of the twenty-fifth year from date of participation, or by or before the end of the twentieth year from and after the effective date for allowance of the proposed antecedent service credit, whichever date is later. No antecedent service credit shall be permitted to be granted under this Section if the result thereof would be to produce greater benefits for completed service than would be provided for current and future service rendered by an employee of the participating municipality for an equivalent period of time and upon the same earnings.

(8) Upon retirement of a member holding an antecedent service certificate which is in force and effect, he shall be entitled to a prior service annuity which his accumulated antecedent service credit will provide, which annuity will be paid him as part of his standard service retirement benefit, or as part of an optional benefit in lieu of a standard service retirement

benefit, or if his retirement is for disability, as part of his disability retirement benefit. If the member holds a prior service certificate, the aggregate amount of his accumulated prior service credit, together with his accumulated special service credit, and his accumulated antecedent service credit shall constitute the sum from which his prior service annuity shall be calculated; and payment of such annuity may be reduced by the Board for the reasons and in the manner provided in Section V of this Act.

[Acts 1947, 50th Leg., p. 108, ch. 75; Acts 1949, 51st Leg., p. 24, ch. 24, art. 1; Acts 1955, 54th Leg., p. 44, ch. 33, §§ 1, 2; Acts 1959, 56th Leg., p. 675, ch. 312, arts. 1 to 6; Acts 1959, 56th Leg., 3rd C.S., p. 382, ch. 7, § 1; Acts 1963, 58th Leg., p. 194, ch. 107, §§ 1, 2, eff. May 7, 1963; Acts 1963, 58th Leg., p. 611, ch. 223, § 1; Acts 1965, 59th Leg., p. 1571, ch. 682, §§ 1 to 5, eff. June 18, 1965; Acts 1969, 61st Leg., p. 1146, ch. 371, §§ 1 to 8, eff. May 29, 1969; Acts 1971, 62nd Leg., p. 1241, ch. 307, §§ 1 to 4, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1754, ch. 637, §§ 1 to 3, eff. June 16, 1973.]

#### Art. 6243h-1. Loan from General Revenue Fund to Municipal Retirement System

For the purpose of providing the Texas Municipal Retirement System with the funds necessary for organizational expenses which will be incurred prior to such time as the income to the Expense Fund of the System is sufficient to provide for operational expenses, there is hereby authorized to be made to the System a loan in the amount of Fifty Thousand Dollars (\$50,000) out of the General Revenue Fund of the State of Texas, upon the terms and conditions hereinafter provided. The Board of Trustees of the Texas Municipal Retirement System shall by resolution authorize the execution of the promissory note of the Texas Municipal Retirement System, payable to the State of Texas for the principal amount of Fifty Thousand Dollars (\$50,000), and the execution of said note shall be attested by the signature of the Director of the System and the Seal of the System shall be impressed thereon. Such note shall bear no interest, and shall provide that, beginning with the year 1950, the Board of Trustees of said System shall certify to the State Comptroller and the State Treasurer on December 31 of each year the amount of expense contributions received by the System from members and participating municipalities during such year for deposit to the Expense Fund provided for in this Act, and shall pay to the State Treasurer for deposit to the General Revenue Fund of the State of Texas in repayment of said note, ten per cent (10%) of the amount of such expense contributions so received in each such year. Such payments shall continue until the Fifty Thousand Dollars (\$50,000) advanced by the State to the System has been repaid in full, at which time such payments shall cease.

Immediately upon delivery of such note to the State Treasurer, the State Comptroller is hereby authorized and directed to issue his warrant drawn upon the General Revenue Fund of the State, payable to the Texas Munic-

ipal Retirement System, and the State Treasurer is hereby authorized and directed to pay over on surrender of said warrant to the System, Fifty Thousand Dollars (\$50,000) out of any moneys in the General Revenue Fund of the State of Texas not otherwise appropriated, and the Board of Trustees of said System shall deposit such funds in an authorized depository of the System to the credit of the Expense Fund.

[Acts 1949, 51st Leg., p. 24, ch. 24, art. 2.]

**Art. 6243h-2. Boards of Trustees of Municipal Utilities or Property; Application of Municipal Retirement System**

Sec. 1. No pension or retirement benefit plan or system for employees of any Texas municipality, whether provided for by general or special law, city charter, or city ordinance, shall become or be made applicable to employees of any Board of Trustees created or appointed in pursuance of Article 1115, Revised Statutes, or any similar law providing for a Board of Trustees to administer municipal utilities or properties, unless and until such pension or retirement benefit plan or system has been approved and adopted by the Board of Trustees employing such employees and such Board of Trustees has made provision for the payment out of the revenues of the utility systems or its properties of the necessary payments to be made as the employer's contribution to such pension or retirement benefit plan or system.

Sec. 2. Any plan or system providing for pensions or retirement benefits which may have heretofore been adopted or may hereafter be adopted by any such Board of Trustees may be applied to the employees of such Board of Trustees independently of and to the exclusion of any plan or system applicable to or affecting other employees of the municipality.

[Acts 1951, 52nd Leg., p. 24, ch. 17.]

**Art. 6243i. Repealed by Acts 1951, 52nd Leg., p. 397, ch. 254, § 27**

**Art. 6243j. Police Officers' Pension System in Cities of 150,000 to 400,000 Population**

**Creation of System**

Sec. 1. There is hereby created in this State a Police Officers' Pension System in all cities having a population of not less than one hundred and fifty thousand (150,000) inhabitants, nor more than four hundred thousand (400,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of

whether or not any future population exceeds or falls below said population bracket.

**Definitions**

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any Police Department coming within the provisions of this Act.

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except special officers, part-time officers, janitors, car washers, cooks, and secretaries.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the Police Department.

(e) "Pension" means payments for life to the Police Department member out of the Pension Fund provided for herein upon becoming disabled or reaching retirement as provided herein and becoming eligible for such payments.

(f) "Separation from service" means cessation of work for the city in the Police Department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

(h) "Prior-service credit" means credit for service rendered a city by an employee in the Police Department prior to his becoming a member of the Pension System.

(i) "Performance of duty" means the duties usually performed by a policeman during his regular working hours and at other times when he is called upon to perform emergency duties within the regular scope of his employment.

**Membership**

Sec. 3. (a) Any person except as herein provided, who is an employee of such city in the Police Department on the effective date hereof, shall be eligible for membership in the Pension System, and shall automatically become a member upon the expiration of ninety (90) days from the effective date hereof, unless the employee has filed with the Pension Board his written election not to become a member, which shall constitute a waiver of all present and prospective benefits which otherwise would inure to him by participation in the System. But any member of the Police Department of such city, whose membership in the Pension System is contingent upon his own election and who elects not to participate, may later become a member provided he passes such

medical examination as the Pension Board may require. If such employee becomes a member within six (6) months after the effective date of this Act, the employee shall be eligible for prior-service credit, but if he does not become a member within such period, he shall not be eligible for prior-service credit. Written notice shall be given each and every member of the Police Department eligible for membership in the Pension System by the Secretary of the Pension Board within sixty (60) days from the passage of this Act informing him of the terms and provisions of this paragraph.

(b) Any person who hereafter becomes an employee of such city in the Police Department after the passage of this Act shall automatically become a member of the Pension System as a condition of his employment, and he will be required to sign a letter making application for Pension benefits.

(c) Part-time, seasonal, or other temporary employees shall not become, nor be eligible as, members of the Pension System.

#### Pension Board

Sec. 4. (a) There is hereby created in any city within this Act a Pension Board for the Police Officers' Pension System. Said Board is hereby vested with the general administration, management and control of the Pension System herein established for said city.

(b) The Board shall be composed of seven (7) members, as follows:

(1) The Mayor, to serve for the term of office to which he was elected;

(2) The Chief of Police, to serve until his successor is qualified;

(3) The City Treasurer, to serve until his successor is qualified;

(4) Three (3) active policemen who shall be selected by a majority vote of the members of the Pension System; said policemen members shall serve for a period of two (2) years and until their successors are elected and qualified. Vacancies occurring by reason of expiration of term of office, death, resignation or removal shall be filled by an election by a majority vote of the members of said Pension System;

(5) One (1) legally qualified taxpaying voter of the city, who has been a resident thereof for the preceding three (3) years; such member, being neither officer nor employee of the city, shall be chosen by the other six (6) members of the Board, and he shall serve for a period of two (2) years and until his successor is selected and qualified.

Said Board, as herein provided, shall be selected and organized upon the passage of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as

Chairman; one (1) member as Vice-Chairman; and one (1) member as Secretary. Beginning with the first day of January, 1952, and annually thereafter, the Board shall elect its Chairman, Vice-Chairman and Secretary for the ensuing year.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) Pursuant to the powers granted under the charter of such city, the mayor shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of such city and who, acting under direction of the Pension Board, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Five (5) members of the Board shall constitute a quorum, and a majority vote of those members present shall be necessary for a decision of said Board.

(f) No moneys shall be paid out of the Pension System Fund except by warrant, check, or draft signed by the Treasurer and countersigned by either the Chairman or Secretary, upon an order by said Pension Board duly entered in the minutes.

(g) The Pension Board shall determine the prior service to be credited to each present employee of the Police Department who becomes a member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior-service credit. After obtaining the necessary information such Board shall furnish each member of the Pension System a certificate showing all prior-service credits authorized and credited to such member. Such member may, within one (1) year from the date of issuance or modification of such certificate, request the Board to modify or change his prior-service certificate, otherwise such certificate shall be final and conclusive for retirement purposes as to such service.

#### Treasurer

Sec. 5. The City Treasurer is hereby designated as the Treasurer of said Pension System Fund for said city Police Officers' Pension System, and his official bond to said city shall operate to cover his position as Treasurer of such Pension System Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Pension System shall be paid over to the said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### Payments by Members

Sec. 6. Commencing with the first day of the month after the expiration of ninety (90) days from the passage of this Act, each member of the Pension System shall pay monthly into the Pension System Fund not less than four per cent (4%) nor more than seven per cent (7%) of his statutory minimum and longevity pay. Subject to this limitation, the Pension Board shall set the amount that each member shall pay into said Pension System Fund. Said payments into the Pension System Fund shall be effected by the city deducting the amount to be contributed by each member of said Pension System from his wages earned. Said deduction shall be paid into the Pension System Fund by the city.

#### Payments Into Fund by City

Sec. 7. In addition to the payments in the next preceding Section such city shall pay monthly into such Pension System Fund, from the general or other appropriate fund of any such city, an amount equal to the total sum paid into such Fund by salary deductions of members as set out in the next preceding Section.

#### Depletion of Fund; Reduction of Benefits

Sec. 8. In the event the Pension System Fund becomes seriously depleted, in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reduction of benefits shall continue only for such time as such depleted condition continues to exist, and after such time of depletion has ceased to exist and the Pension Board finds said Pension System Fund is in condition to warrant, it shall thereafter restore the benefits and resume payment of all pensioners and beneficiaries as though such preceding reductions had not occurred.

#### Investment of Surplus

Sec. 9. Whenever in the opinion of the said Pension Board there is on hand in said Pension System Fund a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest bearing obligations and securities of the United States, the State of Texas or any city or any county.

#### Transfer of Pro Rata Share of Existing Fund

Sec. 10. Immediately upon this Act becoming a law, there shall be transferred to the Police Officers' Pension System the prorata share of any pension fund heretofore existing to which police officers have contributed, including the prorata part of the fund paid by the city and all accumulated interest on the money which both the policemen and the city have heretofore contributed to the fund. It shall be the duty of the city official or officials responsible for said existing fund to make such transfer immediately.

#### Retirement Pension

Sec. 11. From and after the passage of this Act, any member of such Pension System who has been in the service of the city Police Department for a period of twenty-five (25) years shall receive from the Pension Board a pension certificate. Any person who holds a pension certificate and who has attained fifty-five (55) years of age shall be entitled to a monthly retirement pension equal to one half ( $\frac{1}{2}$ ) of his statutory minimum pay plus one half ( $\frac{1}{2}$ ) of his longevity pay, which he received when such certificate was awarded, each month for the rest of his life upon his retirement from the services of said city Police Department; provided, however, said monthly retirement pension shall not exceed the sum of One Hundred and Twenty-five Dollars (\$125). However, when a member has served twenty-five (25) years or more in the Police Department and has attained the age of fifty-five (55) years, if he desires and if the physicians employed by the Pension Board agree that said member is physically fit to continue his active duties in the Police Department, he may continue such duties until he is not over sixty-five (65) years of age, and when he retires he will receive in addition to his monthly retirement pension set out above, a service bonus of One Dollar (\$1) per month for each year of service over and above the amount per month payable if he had retired when he attained the age of fifty-five (55) years. It shall be compulsory for any member to retire from service upon attaining sixty-five (65) years of age; failure of any member of the Pension System to comply with this provision shall deprive the member or his dependents of any of the benefits provided for herein. If at the time of retirement such member has completed less than twenty-five (25) years of service, but more than twenty (20) years of service, his retirement pension shall be prorated. For example, if the employee has completed only twenty (20) years of service, his monthly pension would be four-fifths ( $\frac{4}{5}$ ) of one half ( $\frac{1}{2}$ ) of his statutory minimum pay and one half ( $\frac{1}{2}$ ) his longevity pay. No member shall be required to make any payments into the Pension System Fund after he has been issued a pension certificate and who has retired from active service in the Police Department. However, if he continues to work for the city Police Department after receiving a pension certificate, he shall continue his monthly payments into the Pension System Fund until he retires.

#### Pensions to Widow and Dependents

Sec. 12. If any member of the Police Department, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate, or if while in service any member shall die from any cause growing out of or in consequence of the performance of his duty, and shall leave surviving a widow, a child or

children under the age of eighteen (18) years or a dependent parent, said Board shall order paid a monthly allowance as follows: (a) To the widow so long as she remains a widow, sixty per cent (60%) of the pension per month that said member would have received if living and had retired with twenty-five (25) years of service, provided she shall have married such member prior to his retirement; (b) to the guardian of each child the sum of Six Dollars (\$6) per month until such child reaches the age of eighteen (18) years or marries; (c) to the dependent parent, only in case no widow is entitled to allowance, the sum the widow would have received to be paid to but one parent and such parent to be determined by the Pension Board, and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars (\$12) per month for each said dependent minor child; and provided that such minor child under eighteen (18) years of age is unmarried. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

If a member of this Pension System is killed while performing his official duties, or dies from injuries received while performing such duties, the same benefits payable under the provisions of this Act to Pension System members who hold a pension certificate and have attained fifty-five (55) years of age, shall be paid to the persons designated in this Section.

#### Death From Natural Causes or Causes Not Covered

Sec. 13. If a member of this Pension System dies from natural causes or from any cause not covered under the provisions of this Act, the Pension Board shall pay to his estate all of the exact amount of money he has heretofore paid into the Pension System Fund in lieu of any other benefit provided for herein.

#### Retirement for Disability

Sec. 14. Any member of this Pension System who becomes incapacitated for performance of his duty by reason of any bodily injury received in, or illness caused by the performance of his duty, shall be retired upon presentation to the Pension Board of proof of the disability, and shall receive a retirement allowance equal to the percentage of his disability; for example, if he is fifty per cent (50%) incapacitated, he shall receive fifty per cent (50%) of the amount he would receive if retired after completion of twenty-five (25) years service per month during the remainder of his life or so long as he remains incapacitated. Provided, however, that if, at that time, he is qualified as to age and service for retirement, he shall receive the full amount of pension per month, or in the event he is past fifty-five (55) years of

age and has more service than the minimum of twenty-five (25) years, and becomes incapacitated he shall receive the full amount of pension per month plus One Dollar (\$1) for each additional year as his service bonus. When any member has been retired for permanent, total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payment stopped. If a member who has been retired under the provisions of this Section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city in the Police Department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such pension payment stopped. No person shall be retired either for total or partial disability unless there shall be filed with the Pension Board an application for pension benefit, at which time the Pension Board shall have him examined by no fewer than three (3) physicians, to be chosen by the Pension Board and to make their report to the Pension Board. If a policeman is hurt while working on a regular shift or tour of duty, or if he is at home or some other place and an emergency arises wherein he has to perform the official duties of a policeman and is injured, he shall receive the benefits of this Act. In all cases where a policeman seeks benefits under this Section, it shall be the duty of the Pension Board to determine if the policeman did receive his injuries in the performance of his duty.

#### Computation of Period of Service

Sec. 15. In computing the twenty-five (25) years of service required for a retirement pension, twenty-five (25) years of continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service if out of service more than two (2) years; no service prior to said interruption shall be counted, other than provided in Section 21.

#### Leaving Employment Before Becoming Eligible

Sec. 16. When any member of such Pension System shall leave the employment of such Police Department except as specifically provided for herein, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of such Pension System. When a member has left the service of the city Police Department as aforesaid and has therefore ceased to be a member of such Pension System, if such person shall thereafter be re-employed by the city Police Department he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and

practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with such city Police Department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom, and also shall, within six (6) months after his re-employment by the city in the Police Department, make a written application to the Pension Board for reinstatement in the Pension System.

#### Transfers From Other City Departments

Sec. 17. No prior credit shall be allowed for service to any person who may hereafter transfer from some other department in the city to the Police Department. Policemen now serving who have heretofore transferred from some other city department may be given credit for such prior service by the Pension Board. The prior-service credits shall all be granted within sixty (60) days after this Act becomes law. For example, if one is transferred from some other department of the city to the city Police Department, sixty-one (61) days after this Act becomes law, such person's service will be computed only from the day he enters the city Police Department.

#### Gifts and Donations

Sec. 18. The Police Officers' Pension System may accept gifts and donations and such gifts or donations shall be added to the Pension Fund for the use of such System.

#### Legal Matters

Sec. 19. The city attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, employ an attorney, or attorneys, to handle its legal matters and shall pay reasonable compensation therefor out of said Pension System Fund.

#### Exemption From Legal Process; Assignment or Transfer

Sec. 20. No portion of any such Pension System Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment of satisfaction, in whole or in part, out of said Pension System Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension System Fund or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. Said funds shall be sacredly

held, kept, and disbursed for the purposes provided by this Act, and for no other purpose whatsoever.

#### Military Service

Sec. 21. Members of the Pension System engaged in active military service required because of a National Emergency shall not be required to make the monthly payments into the Pension System Fund provided for in this Act, nor shall they lose any previous years of service with the Police Department caused by such military service. Such military service shall count as continuous service in the Police Department, provided that when the member is discharged from the military service he shall immediately return to his former duties with the city Police Department. The city, however, shall be required to make its regular monthly payments into the Pension System Fund on each member while he is so engaged in such military service. In the event of death of a member of this Pension System, either directly or indirectly caused from such military service, his widow or dependent parent or other dependents shall not be entitled to receive any benefits from this Fund.

#### Civil Actions

Sec. 22. The Pension Board of any city as herein created and constituted shall have the power and authority to recover by civil action from any offending party, or from his bondsmen, if any, any moneys paid out or obtained from said Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of said Board for the use and benefit of such Fund.

#### Partial Invalidity

Sec. 23. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

#### Former Employees Now Receiving Pension

Sec. 24. Immediately upon this Act becoming a law, the former employees of any such Police Department who are now being paid a pension from a pension fund, shall hereafter be paid a monthly pension of One Hundred Dollars (\$100) per month out of the Pension Fund provided for herein. Any such city shall have the right and option to pay such former employees any amount over and above those hereinabove provided for, but such additional payments, if any, shall be borne by such city and not the Pension Fund.

#### Election; Adoption Without Election

Sec. 25. The city is authorized to call an election to determine if the city desires to adopt this Act after a petition has been presented to the governing body of the city, signed by five per cent (5%) of the qualified

voters of the city who voted in the last municipal election. Such election must be advertised by publication in at least one (1) newspaper of general circulation in said city once each week for four (4) consecutive weeks. The question shall be submitted to the qualified voters of the city at a special election to be held for such purpose at which all ballots shall have printed thereon:

"FOR: The proposed Police Pension System."

"AGAINST: The proposed Police Pension System."

No other issues shall be joined with the proposition submitted at this election on the same ballot.

Nothing herein is to prevent the city governing body from adopting the proposed pension plan without an election.

#### Withdrawal of Moneys; Return on Reinstatement

Sec. 26. Any policeman who has been relieved from duty or voluntarily quits shall have the right to withdraw all moneys paid in by him into the Pension System. If he is reinstated in the Police Department with full seniority, he shall return to the Pension Fund the amount of money previously withdrawn when his services were terminated.

[Acts 1951, 52nd Leg., p. 397, ch. 254.]

### 3. OLD AGE ASSISTANCE

Art. 6243-1. Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 45

Art. 6243-2. Purpose

It is hereby declared to be the intention and purpose of the Legislature by and through the enactment of this Act to provide, in part, for the payment of old age assistance benefits, by raising revenues for such purpose and by delimiting the class of persons who shall be eligible for old age assistance benefits. It is recognized by the Legislature that it is impracticable to pay benefits to persons over sixty-five (65) years of age, except those who are in necessitous circumstances; in order that the needy aged may be cared for, it is necessary that the State have funds on hand to meet the accruing obligations therefor. In order to accomplish this purpose, the Legislature declares that it is necessary to accomplish two incidental objectives, namely: (1) the number of persons receiving old age assistance benefits must be decreased, and (2) in addition, more revenues must be provided for the purposes of paying such benefits. The accomplishment of this object is the purpose of this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 1, § 1.]

Arts. 6243-3 to 6243-21. Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 44

Art. 6243-22. Permanent Old Age Pension Fund; Liquidation

Liquidation of Certain United States Obligations;  
Redeposit

Sec. 1. The Treasurer of the State of Texas is empowered and directed to immediately sell and liquidate any and all bonds or interest bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States that have been deposited in the Permanent Old Age Pension Fund and the gross proceeds from such sale and liquidation shall be immediately redeposited in the Permanent Old Age Pension Fund.

Transfer to Texas Old Age Assistance Fund

Sec. 2. It is further provided that there is hereby appropriated and transferred all monies, choses in action, funds and things of value now a part of and accumulated in the Permanent Old Age Pension Fund into the Texas Old Age Assistance Fund to be used by the Old Age Assistance Commission for the sole purpose of paying Old Age Assistance Grants to applicants whose applications have been and may be approved and allowed; and be it further provided that no portion of said money shall be expended for administrative purposes; and be it further provided that the State Treasurer and all other accounting officers in the State are hereby authorized and directed to take such action as may be necessary to effectuate this appropriation and transfer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1989, ch. 479.]

Art. 6243-23. Warrants Against Texas Old Age Assistance Fund; Interest

Sec. 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under authority of this Act to accomplish its purpose.

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon

application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

Sec. 5. For the purposes of this Act and until the appropriation made in House Bill No. 8, now pending in this, the Third Called Session of the Forty-fourth Legislature,<sup>2</sup> becomes available, the unexpended balance of the appropriation made in Chapter 472 of the Acts of the Second Called Session of the Forty-fourth Legislature for the purpose of paying Old Age Assistance and defraying the expense of the administration of the Old Age Assistance Act is hereby reappropriated. The unexpended balance of the appropriation made in said House Bill No. 8 remaining on hand on August 31, 1937, is hereby reappropriated for the purposes of this Act for the fiscal year ending August 31, 1938, to assure the payment of any warrants issued under the provisions of this Act. Provided, however, that the power conferred in this Act does not authorize the issuance of more than Three Million Dollars (\$3,000,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after March 1, 1937.

Sec. 6. This law shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other law, the provisions of this Act shall have precedence and shall be fully effective.

[Acts 1936, 44th Leg., 3rd C.S., p. 2084, ch. 496.]

<sup>1</sup> Article 6243-1, § 6 (repealed).

<sup>2</sup> Article 6243-2 et seq.

#### Art. 6243-24. Warrants Against Texas Old Age Assistance Fund; Interest; Calling Warrants

##### Authority to Pay Interest

Sec. 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said Fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

##### Form and Methods

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under the authority of this Act to accomplish its purpose.

##### Determination of Interest Rate

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

##### Authority not Limited by Article 6243-1

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

<sup>1</sup> Article 6243-1, § 6 (repealed).

##### Limitation

Sec. 5. Provided that the power conferred in this Act does not authorize the issuance of more than Nine Hundred Thousand Dollars (\$900,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after September 1, 1939.

##### Outstanding Warrants to be Paid

Sec. 6. a. It is provided that the Treasurer of the State of Texas shall call all warrants now outstanding that have heretofore been issued under the authority and provisions of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,<sup>1</sup> and he is directed and authorized to pay said warrants, together with interest thereon, out of the Texas Old Age Assistance Fund, according to the following schedule:

On October 10, 1939, warrants in the amount of One Hundred Thirty Thousand, Nine Hundred and Eighty-seven Dollars (\$130,987) shall be called and paid by the Treasurer, together with interest thereon, and on the 10th day of each month thereafter, the Treasurer is directed and authorized to call and pay the remaining outstanding warrants in the amount of Two Hundred Thousand Dollars (\$200,000) per month, together with interest thereon, until such time as all outstanding warrants hereinabove referred to shall be called and paid in full, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

b. The Treasurer of the State of Texas is directed and authorized to call and pay all warrants that might hereafter be issued under and by virtue of the provisions of this Act in ap-

proximate equal monthly installments on the 10th day of the months May, 1940, to September, 1940, both inclusive, together with interest thereon, out of the Texas Old Age Assistance Fund, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

<sup>1</sup> Article 6243-23.

#### Exchange of Original Warrants for Obligations of State

Sec. 7. (1) The Old Age Assistance Commission be and is hereby authorized and directed to offer to and deliver to the holder, or holders, of the warrants which may be issued under the provisions of this Act and of the warrants heretofore issued for Old Age Assistance under authority of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session, and now outstanding, the State's obligation in the same principal amount, or amounts, in such forms and denominations as shall be determined by such Commission, approved by the Attorney General, and acceptable to such holder, or holders, bearing interest at not to exceed one and six-tenths (1.6) per cent per annum or not to exceed the rate of interest which shall be paid on or on account of the warrants which may be issued under the terms of this Act, whichever rate is the lower. Said obligations shall bear dates to be fixed by the Commission and shall mature exactly according to the schedules set out in Section 6 hereof.

(2) Upon exchange of the original warrants for the obligations authorized hereunder the State Treasurer shall retain in his possession in escrow as trustee said original warrants until the obligations herein authorized are paid in full. And the holder, or holders, of such obligations, in addition to all other rights, shall be subrogated to the rights of the holders of such original warrants. Upon payment of such obli-

gations said original warrants shall be cancelled by the State Treasurer. There is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

(3) Interest on such original warrants shall be paid in accordance with the contract or contracts under which they were issued up to the date of the exchange for the obligations authorized herein.

(4) Such obligations to be substituted therefor shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas on the basis of one dollar principal amount of such obligations for each dollar of deposited funds.

(5) The Governor, State Treasurer, Attorney General, Texas Old Age Assistance Commission, Comptroller of Public Accounts, and the Secretary of State are hereby directed to do any and all things necessary to accomplish the purposes of this Section.

(6) When such obligations shall have been issued in accordance with a resolution adopted by the Texas Old Age Assistance Commission and shall have been approved by the Attorney General, they shall be incontestable and the full faith and credit of the State shall be pledged to their payment.

#### Act Cumulative; Conflicting Laws

Sec. 8. This Act shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other laws, the provisions of this Act shall have precedence and shall be fully effective.

[Acts 1939, 46th Leg., p. 536.]

Arts. 6243-25 to 6243-100. Reserved for Future Legislation

# TITLE 109A

## PLUMBING

### Art. 6243-101. Plumbing License Law of 1947

#### Name

Sec. 1. This Act shall be known and may be cited as "The Plumbing License Law of 1947."

#### Definitions

Sec. 2. (a) The word or term "plumbing" as used in this Act means and shall include:

(1) All piping, fixtures, appurtenances and appliances for a supply of water or gas, or both, for all personal or domestic purposes in and about buildings where a person or persons live, work or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water or gas supply, or both, on the premises, or the main in the street, alley or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal terminal holding private or domestic sewage;

(2) the installation, repair and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, or both, or disposal of waste water or sewage.

(b) A "Master Plumber" within the meaning of this Act is a plumber having a regular place of business, who, by himself, or through a person or persons in his employ, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(c) A "Journeyman Plumber" within the meaning of this Act is any person other than a master plumber who engages in or works at the actual installation, alteration, repair and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(d) A "Plumber's Apprentice" within the meaning of this Act is any person other than a master plumber or journeyman plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

(e) A "Plumbing Inspector" within the meaning of this Act is any person employed by a city, town or village for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, and who has successfully fulfilled the examinations and requirements of the Board.

(f) The word or term "Board" as used in this Act means the Texas State Board of Plumbing Examiners.

#### Acts Permitted Without a License

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his home;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances; appliance installation and service work done by anyone who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances.

#### State Board of Plumbing Examiners

Sec. 4. The Texas State Board of Plumbing Examiners shall consist of six members, each of whom shall be a citizen of the United States and a resident of this state. Members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified; except, the members of the Board

first appointed shall hold office, two for two years, two for four years, and two for six years as determined by the Governor in making said appointments. One member of the Board shall have had at least ten years practical experience as a master plumber, one member shall have had at least five years practical experience as a journeyman plumber, one member shall be a licensed architect, one member shall be a licensed sanitary engineer and two members shall be building contractors with five years contracting experience, one of whom shall be principally engaged in home building and one of whom shall be principally engaged in commercial building.

#### Powers and Duties of the Board

Sec. 5. The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary-treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may deem necessary to properly carry out the intent and purpose of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce rules and regulations consistent with this Act for the examination and licensing of master and journeymen plumbers and plumbing inspectors, and said Board shall for this purpose appoint an employee or employees thereof, with the power of removal, as a plumbing examiner or examiners, whose duties shall be to examine, as to their fitness and qualifications, all persons applying to the Board for licenses to engage in the business, trade or calling of a master plumber or a journeyman plumber or to serve as a plumbing inspector, and to promptly certify the result thereof to said State Board of Plumbing Examiners.

#### Compensation of Board

Sec. 6. Members of the Board shall not receive any fixed salary for their services, but each member shall be allowed for each and every day in attending the meetings of the Board, the sum of Twenty (\$20.00) Dollars, including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Chairman or Secretary of the Board; providing no member shall receive more than Five Hundred (\$500.00) Dollars annually, exclusive of expenses. The members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this

state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

#### Expenses of Board

Sec. 7. All expenses incurred under this Act shall be paid from the fees collected by the Board under this Act. No expense incurred under this Act shall ever be a charge against the funds of the State of Texas. The Board shall, as of December 31, 1947, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements under this Act for each calendar year. If the funds remaining in the hands of the Board at the end of any calendar year are in excess of the expenses of the Board, the Board shall reduce the license and other fees provided hereunder; but no fees collected hereunder shall ever be paid into the General Fund of this state.

#### Issuance of Licenses

Sec. 8. The Board shall issue licenses to such persons of good moral character as have by a uniform, reasonable examination shown themselves fit, competent and qualified to engage in the business, trade or calling of a master plumber or journeyman plumber, or plumbing inspector, as the case may be.

#### Revocation of Licenses; Hearing

Sec. 9. The Board shall have power to revoke any license issued hereunder if the same was obtained through error or fraud, or if the recipient thereof is shown to be incompetent or shall have wilfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; provided, that before any license shall be revoked, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said Board, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall be not less than twenty days after the service thereof. The Board shall have power to appoint, by an order in writing, any competent person to take testimony in such hearing, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the Board shall be based upon its examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one year from the date of such revocation, but not before, apply for a new license.

#### Existent Plumbers and Plumbing Inspectors Licensed Without Examination

Sec. 10. All journeyman plumbers and master plumbers holding a license as such from any city examining and supervising Board of Plumbers in this state and all presently acting plumbing inspectors at the time this Act takes effect may, within one-hundred twenty days

thereafter, procure a license as a journeyman plumber or master plumber or plumbing inspector, as the case may be, without examination, upon payment of the license fee herein required. Every person applying after the expiration of said one-hundred twenty days shall be required to take the examination herein provided for, and satisfy said Board as to his or her qualifications and competency.

Apprentice

Sec. 11. Any person who has worked as a plumber's apprentice at the business, trade or calling of plumbing for such a length of time as the Board may prescribe in its rules and regulations, and who desires to take an examination to entitle him to a license as a journeyman plumber, may file his application and take the examination provided by the Board.

Licenses

Sec. 12. Licenses issued by the Board shall be valid throughout the state, but shall not be assignable or transferable. The Board shall forward to the local Board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before February 1st upon payment of the required fee. In case of failure to renew a license as aforesaid on or before February 1st in any year, the person named therein may, upon payment of the said fee and a deferred renewal fee of Ten (\$10.00) Dollars, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof, which shall expire on the ensuing 1st day of February; provided that such renewed license shall not constitute its holder a license for any period preceding its issue.

Expiration Dates of Licenses; Proration of Fees

Sec. 12A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on February 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Fees

Sec. 13. The following shall be the maximum fees charged under this Act by the Board, to wit:

Master plumber's license .....	\$50.00
Renewal of master plumber's license .....	50.00
Journeyman plumber's license ..	5.00
Renewal of journeyman plumber's license .....	5.00

Plumbing inspector's license ---\$	5.00
Renewal of plumbing inspector's license .....	5.00
Revival license fee for master plumber .....	50.00
Revival license fee for journeyman plumber .....	5.00
Revival license fee for plumbing inspector .....	5.00
Examination fee for master plumber .....	50.00
Examination fee for journeyman plumber .....	5.00
Examination fee for plumbing inspector .....	5.00

Prohibition Against Practicing Without License

Sec. 14. After the expiration of one hundred twenty days from the effective date of this Act, no person, whether as a master plumber, employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of one hundred twenty days from the effective date of this Act it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act. And it is expressly provided that the provisions of Article 122 of the Penal Code of Texas<sup>1</sup> shall apply to violations of this Act, and said Article 122 of the Penal Code and the penalties therein provided are hereby expressly referred to.

<sup>1</sup> Repealed by Penal Code of 1974.

Municipal Rules and Regulations

Sec. 15. Every city in this state of more than five thousand (5,000) inhabitants shall, and any city or town of this state may, by ordinance or by-law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other fixtures by and through which a supply of water, gas or sewage is used or carried; and provided that they shall not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no plumbing shall be done except in case of repairing of leaks, without a permit being first issued therefor upon

such terms and conditions as such city or town shall prescribe; provided that no such ordinance, by-law, rule or regulation prescribed by any such city or town shall be inconsistent with this Act, or any rule or regulation adopted or prescribed by the State Board of Plumbing Examiners.

Repealer

Sec. 16. Articles 1078, 1079, 1080, and 1081, Chapter 7, Title 28, Revised Civil Statutes of Texas, 1925, and all laws or parts of laws in

conflict with the provisions of this Act are hereby expressly repealed.

Partial Unconstitutionality

Sec. 17. If any section or any part of this Act shall be held to be invalid, such invalidity shall not affect the remaining portions thereof; it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid.

[Acts 1947, 50th Leg., p. 192, ch. 115; Acts 1973, 63rd Leg., p. 626, ch. 266, § 13, eff. June 11, 1973.]

## TITLE 110

### PRINCIPAL AND SURETY [Repealed]

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business and Commerce Code, repealed various articles of Title 110 as indicated, effective September 1, 1967. See, now, Business and Commerce Code, § 34.01 et seq.*

Arts. 6244, 6245. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

Art. 6246. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Arts. 6247 to 6250. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

Art. 6251. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 6252. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

## TITLE 110A

### PUBLIC OFFICES, OFFICERS AND EMPLOYEES

Article	
6252-1.	Conduct of Business by Assistants or Deputies When Physical Vacancy Occurs in Public Office.
6252-2.	Failure to Publish Legal Notices or Financial Statements.
6252-3.	Payroll Bond Purchases.
6252-3a.	Payroll Deductions for Membership Dues in Employees' Association by Cities of 10,000 or More Inhabitants.
6252-3b.	Deferred Compensation Plans for Public Employees; Funding.
6252-4.	Repealed.
6252-4a.	Military Service of Employees; Restoration to Employment.
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6252-5.	Expenditures.
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6252-7.	Loyalty Oaths.
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6252-9a.	Dual Office Holding.
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6252-9c.	Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation.
6252-10.	Emergency Interim Executive Succession Act.
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6252-11.	Position Classification Act of 1961.
6252-11a.	State Employees Training Act of 1969.
6252-12.	Use of Electronic Data Processing Center by State Agencies.
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6252-13.	Administrative Rules and Regulations; Adoption; Filing.
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6252-18.	Interpreters for Deaf or Severely Hard-of-Hearing Persons Taking State Examinations.
6252-19.	Tort Claims Act.
6252-19a.	Liability Insurance; Operation of Motor Vehicles, Aircraft, Motorboats or Watercraft; State Departments and Agencies; Allowance to Employees.
6252-20.	Complaints Against Law Enforcement Officers; Writing; Signature.
6252-21.	Failure to Make or Making False Report as to Use of State Automobile or Truck.

Article	
6252-22.	Postage Meters of State; Imprint Plates; Private Use Prohibited.
6252-23.	Representation Before State Agencies; Registration; Violations.
6252-24.	Collecting Debts for Others.
6252-25.	Aid and Compensation to Persons Wrongfully Imprisoned.

#### Art. 6252-1. Conduct of Business by Assistants or Deputies When Physical Vacancy Occurs in Public Office

When there shall occur a physical vacancy in a public office in this State, by reason of death or otherwise, the duties and powers of such office shall immediately devolve upon the first assistant or chief deputy if there be one, who shall conduct the affairs of the office until the vacancy in the term thereof shall be filled by the appointment or election and qualification of a successor to the principal officer; should any such vacancy occur while the Legislature is in Session (where the appointee must be confirmed by the Senate) such first assistant or chief deputy (as such) shall not discharge the duties of the office for a longer period than three (3) weeks and in no event after such Session of the Legislature has adjourned. The provisions hereof shall not apply to vacancies in the membership of boards or commissions.

[Acts 1943, 48th Leg., p. 14, ch. 13, § 1.]

#### Art. 6252-2. Failure to Publish Legal Notices or Financial Statements

Sec. 1. All public officers of the State, counties, cities and school districts who are required by law to publish legal notices or financial statements and who shall fail, refuse, or neglect to make such publications shall be guilty of non-feasance of office and subject to forfeiture of salary for the month in which such failure occurs. Such officers shall be subject to removal from office upon wilful continuance of such neglect of duty.

Sec. 2. Suits to enjoin or recover payment of salary and for removal from office under this law shall be instituted in the proper District Court by the County or District Attorney of the county in which the offending officer resides.

[Acts 1949, 51st Leg., p. 652, ch. 337.]

#### Art. 6252-3. Payroll Bond Purchases

##### Withholding Portion of Compensation

Sec. 1. Whenever any officer or employee of the State of Texas, or of any county or other political subdivision or municipal corporation therein, shall voluntarily authorize in writing his or her department head, in case such per-

son is a state officer or employee, or the disbursing officer of the county or other political subdivision or municipal corporation, in case such person is an officer or employee of the county or other political subdivision or municipal corporation, to withhold a specified portion of his or her salary or compensation for the purpose of purchasing United States Savings Bonds, said department head or disbursing officer, as the case may be, may withhold from such person's salary or compensation for the period and in the amount stated in the authorization, each and every payday during such period, unless such authorization is terminated as hereinafter provided. Such withholding shall be effected by deducting the amount so authorized on the payroll of such department, county, political subdivision or municipal corporation when presented to the Comptroller of Public Accounts or other disbursing officer, as the case may be, for warrants to be issued in payment thereof.

#### Form of Payrolls; Warrants; Trust Account

Sec. 2. The Comptroller of Public Accounts shall prescribe the proper form of payroll for State officers and employees in order to comply with this purpose. The disbursing officer of the county or other political subdivision or municipal corporation referred to herein shall, for the same purpose, prescribe the proper form of payroll for the officers and employees thereof. When such payroll is presented to the Comptroller or other disbursing officer, as the case may be, for payment, a warrant shall issue to each officer or employee, whose name appears thereon, for the full amount of his or her salary less the amount deducted for the purpose of purchasing United States Savings Bonds, and a warrant shall issue to the State Department head or to the disbursing officer referred to herein, as the case may be, for the total amount deducted for all officers or employees for the current payroll period. The warrant for said total deduction shall be deposited with the State Treasurer, or with the official Treasurer of the county or other political subdivision or municipal corporation, as the case may be, in trust to be held by said officer until disbursed by said department head or disbursing officer, as the case may be, for the purchase of United States Savings Bonds for the individual designated in said authorization filed with said department head or disbursing officer. Said trust account shall be designated as "War Bond Payroll Savings Account," and funds deposited therein shall be paid out by said Treasurer on proper warrants drawn by said department head or disbursing officer, as the case may be.

#### Purchase of Savings Bonds; Records

Sec. 3. The department head or disbursing officer, as the case may be, shall use such funds so withheld and so deposited in trust for the purpose of purchasing United States Savings Bonds of the denomination designated and authorized in said written authorization, when-

ever such person shall have a sufficient sum of such withheld sums to pay for such bond, and shall immediately deliver the bond to the person entitled thereto or shall mail the same to the address designated by such person in said written authorization. Said department head or disbursing officer, as the case may be, shall keep proper records at all times showing itemization of moneys so withheld and disbursed by him in compliance with this Act.

#### Termination of Deductions

Sec. 4. The head of any State Department or the disbursing officer of any county or other political subdivision or municipal corporation of the State of Texas shall cease to withhold any of the above-mentioned funds from any of said salaries or compensations under said written authorization upon the happening of any of the following:

- (a) Termination of employment.
- (b) Written notice of cancellation of such former authorization.
- (c) Termination of the arrangement for withholding of such funds by the State Department heads or disbursing officers, as the case may be.

Upon such termination, the money, if any, so withheld, which has not been invested in bonds, shall be immediately remitted by proper warrant to the officer or employee from whose salary or compensation such money has been withheld.

#### No Liability on Official Bonds

Sec. 5. The head of any State Department or the disbursing officer of any county or other political subdivision or municipal corporation herein referred to shall not incur any liability on the bonds required of them as such officials on account of the duties imposed upon them under this Act.

[Acts 1949, 51st Leg., p. 1191, ch. 603.]

#### Art. 6252-3a. Payroll Deductions for Membership Dues in Employees' Association by Cities of 10,000 or More Inhabitants

(a) The governing body of any city of more than 10,000 inhabitants, according to the last preceding federal census, may authorize a program whereby any municipal employee employed in such city may authorize and consent in writing that deduction be made from his monthly salary or wage payment. Such written consent shall so designate and direct the city treasurer or comptroller to transfer such withheld funds to the appointed bona fide employee's association in payment of his membership dues.

(b) The payroll deduction shall not exceed the amount stipulated in the written request, which shall be set out in a form and manner prescribed and provided by the city treasurer or comptroller. The request shall remain in effect until the municipal treasurer or comptroller receives in writing a notice of revocation filed by such municipal employee which shall

be set out in a form and manner prescribed and provided by the city treasurer or comptroller.

(c) Participation in the program herein authorized shall be voluntary on the part of each municipal employee who is on active full-time duty in cities where such a program is in effect.

(d) The governing body of any such city which has authorized the program of payroll deductions provided for in this Section may impose and collect a reasonable administrative fee for the benefit of the city to be collected from each municipal employee participating in such program in addition to the membership dues so withheld, to reimburse the city for the administrative cost of collecting, accounting for, and disbursing such membership dues.

[Acts 1967, 60th Leg., p. 337, ch. 161, § 1, eff. May 12, 1967.]

### Art. 6252-3b. Deferred Compensation Plans for Public Employees; Funding

#### Contracts Between Political Subdivisions and Public Employees; Insurance, Annuity or Mutual Fund Contracts

Sec. 1. The state or any county, city, town, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, contract for, purchase, or otherwise procure a fixed or variable life insurance or annuity contract or mutual fund contracts for the purpose of funding a deferred compensation program for the employee, from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state.

#### Contractual Agreements by Comptroller; Designation of Officers

Sec. 2. The state comptroller is hereby authorized to enter into such contractual agreements with employees on behalf of the state to defer any portion of that employee's compensation; provided, however, that the state comptroller may designate an officer or officers within any state agency, department, board, commission, or institution to enter into such contractual agreements with employees of that particular state agency, department, board, commission, or institution.

#### Administration of Program; Payroll Deductions; Contracts for Administrative Services

Sec. 3. The administration of the deferred compensation program shall be under the direction of the state comptroller or his designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

#### Employee Defined

Sec. 4. For the purposes of this Act, "employee" means any person whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision, for which compensation is paid.

#### Premium Payments for Insurance or Annuity Contracts

Sec. 5. Notwithstanding any other provision of law to the contrary, the state comptroller or the appropriate officer of the county, city, town, or other political subdivision designated to administer the deferred compensation program is hereby authorized to make payment of premiums for the purchase of fixed or variable life insurance or annuity contracts under the deferred compensation program. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

#### Affect on Retirement and Pension Benefits; Taxation

Sec. 6. The deferred compensation program established by this Act shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee.

#### Limit on Financial Liability of Political Subdivision

Sec. 7. The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program shall be limited in each instance to the value of the particular fixed or variable life insurance or annuity contract or contracts purchased on behalf of any employee.

#### Severability

Sec. 8. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision.

[Acts 1973, 63rd Leg., p. 448, ch. 197, eff. May 25, 1973.]

Art. 6252-4. Repealed by Acts 1967, 60th Leg., p. 1074, ch. 469, § 6, eff. Aug. 28, 1967

### Art. 6252-4a. Military Service of Employees; Restoration to Employment

#### Restoration to Employment Upon Discharge

Sec. 1. Any employee of the State of Texas or any political subdivision, state institution, county or municipality thereof, other than a temporary employee, an elected official, or one

serving under an appointment which requires confirmation by the Senate, who leaves his position for the purpose of entering the Armed Forces of the United States, or enters State service as a member of the Texas National Guard or Texas State Guard or as a member of any of the reserve components of the Armed Forces of the United States shall, if discharged, separated or released from such active military service under honorable conditions, be restored to employment in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, to the same position held at the time of induction, enlistment or order to active Federal or State military duty or service, or to a position of like seniority, status, and pay if still physically and mentally qualified to perform the duties of such position.

**Service-Connected Disability; Restoration to Other Employment**

Sec. 2. If such person is not qualified to perform the duties of such position by reason of disability sustained during such military service but qualified to perform the duties of another position in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, the veteran shall be restored to employment in such other position, the duties of which the veteran is qualified to perform as will provide like seniority, status, and pay, or the nearest possible approximation thereof.

**Military Service as Furlough or Leave of Absence**

Sec. 3. Any person who is restored to a position in accordance herewith shall be considered as having been on furlough or leave of absence during such absence in Federal or State military service, and shall be entitled to participation in retirement or other benefits to which employees of the State of Texas or any political subdivision, state institution, county or municipality thereof, are, or may be, entitled and shall not be discharged from such position without cause within one year after such restoration.

**Application for Restoration**

Sec. 4. Veterans eligible for restoration to employment hereunder shall make written application for such restoration within ninety days after discharge or release from active Federal or State military service, to the head of the department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, in or by which such veteran was employed prior to entering such military service and shall attach thereto evidence of discharge, separation, or release from such military service under honorable conditions.

**Requiring Compliance With Law; Hearing**

Sec. 5. In case any person acting in a public capacity fails or refuses to comply with the

provisions hereof, the district court of the district in which such person is a public official, shall have power, upon the filing of a motion, petition or other appropriate pleading by the person entitled to the benefits of such provisions to specifically require such public official to comply with such provisions. The court shall order a speedy hearing in any such case, and shall advance it on the calendar. Upon application to the district attorney for the pertinent district by any person claiming to be entitled to the benefits of such provisions, such district attorney, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the compliance with such provisions; provided, that no fees or court costs shall be taxed against the person so applying for such benefits.

**Repealer**

Sec. 6. Chapter 107, Acts of the 52nd Legislature, 1951,<sup>1</sup> is repealed.

[Acts 1967, 60th Leg., p. 1074, ch. 469, eff. Aug. 28, 1967.]

<sup>1</sup> Article 6252-4.

**Art. 6252-4b. National Guard Duty of Employees; Emergency Leave**

A state employee who is a member of the National Guard called to active duty by the governor because of an emergency, is entitled to receive and shall be granted emergency leave without loss of military or annual leave.

[Acts 1969, 61st Leg., p. 620, ch. 214, § 1, eff. Sept. 1, 1969.]

**Art. 6252-5. Expenditures**

**Boards, Bureaus, Commissions and Agencies of State**

Sec. 1. All expenditures of funds appropriated to the various boards, bureaus, commissions and other agencies of the State of Texas now in existence, or hereafter created shall be made by order of the governing body thereof and the same shall be paid by warrants drawn by the Comptroller of Public Accounts on vouchers approved by the chairman or president of the governing body or by an executive officer, official or employee of such board, bureau, commission or other agency designated by the governing body by order entered on its minutes, if any, and countersigned by the secretary or an executive officer or official designated by the governing body by order entered on its minutes, if any. A certified copy of any such order entered pursuant to the provisions of this Section designating an officer, official or employee to approve and execute or to countersign vouchers, together with a signature card of the person or persons designated, shall be filed with the Comptroller of Public Accounts.

**Purchases by Board of Control**

Sec. 1(a). All invoices sent to the State Board of Control for verification, auditing and

approval from the various State Agencies, Departments, Commissions and Institutions for goods purchased by the Board of Control as provided by law shall be approved by the Board of Control or by an executive, official or employees designated by the Board of Control.

Notice of such designation shall be given the Comptroller in writing together with a signature card of the person so designated.

#### Funds Appropriated to State Departments

Sec. 2. All expenditures of funds appropriated to the various State departments shall be made by the elected or appointed head of the department and the same shall be paid on warrants drawn by the Comptroller of Public Accounts on vouchers approved by such head of the department or by an executive officer, official or employee of the department designated by the head of the department.

Notice of such designation shall be given the Comptroller in writing together with a signature card of the person designated.

#### State Highway Commission

Sec. 2(a): By appropriate order, duly recorded in its official minutes, the State Highway Commission may delegate to some employee or employees of the State Highway Department the authority and duty to approve and sign vouchers for expenditures from the State Highway Fund provided same have been verified by affidavit as required by law; likewise the State Highway Commission may delegate to some employee or employees of the State Highway Department the authority and duty to approve and sign contracts, agreements, and other documents; provided that the purpose and effect of any such voucher or other document shall be to activate and/or carry out the orders, established policies, or work programs theretofore approved and authorized by the State Highway Commission. Each order of the State Highway Commission thus delegating said authority to an employee shall include the limitations herein provided. The State Highway Commission may require any employee exercising the powers provided for in this Act to execute a bond, payable to the State, in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. The premium on such bond shall be paid from the State Highway Fund.

#### Application of Act

Sec. 3. This Act shall not apply to any board, bureau, commission or other agencies of the State whose governing bodies are now authorized by law to designate executive officers or officials to approve and execute and to countersign vouchers nor to any State department whose head is now authorized by law to designate an executive officer or official of the department to approve and execute vouchers. [Acts 1951, 52nd Leg., p. 584, ch. 341.]

#### Art. 6252-5a. Investment of Funds by Agencies and Boards

Sec. 1. All boards and agencies of the State of Texas having the power to direct the investment of their funds are authorized to invest and reinvest any of their funds in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America; in direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives; in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind hereinabove specified; in any other securities made eligible for such investment by other laws and constitutional provisions; or in any combination of the foregoing. Income and profits shall be applied as directed by such board or agency.

Sec. 2. When the securities mentioned specifically above or when such securities as are eligible under other laws or constitutional provisions are purchased from or through a member in good standing of the National Association of Securities Dealers, or from or through a national or state bank, the comptroller of public accounts and the state treasurer are authorized to pay for them upon receipt of an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid therefor is just, due and unpaid. Actual delivery of the securities to the state treasurer or to a bank as hereinafter permitted may be thereafter accomplished in accordance with normal and recognized practices within the securities and banking industries.

Sec. 3. Any securities so purchased having maturity dates of 60 months after date of purchase, or less, may, at the direction of the state treasurer, be deposited with a bank or federal reserve bank or branch thereof designated by the state treasurer within or without the State of Texas, in trust, and such deposits shall be evidenced by trust receipts of the banks in which the securities are thus deposited.

[Acts 1967, 60th Leg., p. 915, ch. 401, eff. June 8, 1967.]

#### Art. 6252-6. State Property; Responsibility and Accounting

##### Legislative Finding and Purpose

Sec. 1. The Legislature finds that the State has a very substantial investment in real and personal property and that a substantial portion of the annual income of the State is spent to acquire property for State purposes and to maintain State property. The purpose of this Act is to establish a system for the orderly accounting for State property, to establish responsibility for the maintenance and care of State property and to prescribe the method of fixing pecuniary liability for the misuse of State property by officials and employees. The principles embodied in this Act are now found

in the common law and Statutes of this State; this Act restates those principles and prescribes the implementing procedures. The State has a real interest in its property and is entitled to having it managed and used in a sound and businesslike manner so that the maximum benefits may be obtained from it and the State's investment therein protected.

#### Definitions

Sec. 2. The provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Civil Statutes of Texas, 1925, and Acts, Fiftieth Legislature, 1947, Chapter 359,<sup>1</sup> on the interpretation of Statutes shall apply specifically to this Act. In addition to these standard definitions, in this Act, unless the context otherwise requires:

(a) "Agency" shall include any State department, agency, board or other instrumentality, whether it is financed in whole or part by funds appropriated by the Legislature or not; but shall not include local political subdivisions of the State, such as counties, cities, towns, school districts, flood control districts, irrigation districts, and the like.

(b) "Agency head" shall mean the full-time State elected or appointed official or officials who administer the agency or the executive who has been appointed to administer the agency by a part-time State elected or appointed official or officials.

<sup>1</sup> Article 23a.

#### Property Accounting

Sec. 3. All real and personal property belonging to the State shall be accounted for by the head of the agency which has possession of the property.

(a) The Comptroller of Public Accounts shall administer the property accounting system established by this Act. The State Auditor shall administer the property responsibility system established by this Act. The Comptroller shall issue such rules and regulations and manual of instruction and prescribe such records, reports, and forms as he deems necessary to accomplish the objects of this Act subject to the approval of the State Auditor. The State Auditor is directed to cooperate with the Comptroller in the exercise of the Comptroller's rule-making powers herein granted by giving technical assistance and advice.

(b) The Comptroller shall maintain a complete and accurate set of centralized records of State property. However, where the Comptroller finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the Comptroller, the Comptroller may direct that the detailed records be kept at the principal office of such agency. Where the Comptroller issues such order, the Comptroller shall keep only summary records of the

property of such agency and the agency shall keep such detailed records as the Comptroller directs and furnish the Comptroller with such reports at such times as the Comptroller directs.

(c) Each agency head shall cause each item of State property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the Comptroller in marking State property.

#### Agencies and Property Subject to Control

Sec. 4. (a) All State agencies shall comply with the provisions of this Act and shall keep the property records required by the Act.

(b) All real property owned by the State shall be accounted for by the agency which possesses the property. However, the real property administered by the General Land Office shall be accounted for by that office and not by the system prescribed in this Act, and the real property administered by the permanent funds established by the Legislature and people shall be accounted for by the agency now charged with its administration and not by the System prescribed in this Act.

(c) All personal property owned by the state shall be accounted for by the agency that possesses the property. The Comptroller shall by regulation define what is meant by personal property for the purposes of this Act, but such definition shall not include non-consumable personal property having a value of Fifty Dollars (\$50.00) or less per unit. In promulgating such regulations, the Comptroller shall take into account the value of the property, its expected useful life, and the cost of record keeping should bear a reasonable relationship to the cost of the property upon which records are kept. The Comptroller shall consult with the State Auditor in making such regulations and the Auditor shall cooperate with the Comptroller in the exercise of this rule making power by giving technical assistance and advice.

(d) All medical, surgical, technical equipment and supplies provided by the Texas State Department of Health to Local Public Health Units, Local Public Health Laboratories, state institutions, and non-profit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, technical equipment and supplies shall be accounted for by that Department and not by the system prescribed in this Act.

And providing further, that all medical, surgical, technical equipment and supplies provided by the Texas State Department of Health to Local Public Health Units, Local Public Health Laboratories, state institutions, and non-profit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, technical equipment and supplies which are now being accounted for and complying with the provisions under the present system of accounting

shall be deleted from and not required after the passage and the effective date of this Act.

Provided, however, the State Department of Health shall maintain at all times a complete record of such medical, surgical, technical equipment and supplies provided and such records shall be verified by the State Auditor and available to the Federal Auditors for the Agency of the Federal Government making such grants for assistance in the purchase of such medical, surgical, technical equipment and supplies.

#### Property Responsibility

Sec. 5. Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the State property possessed by his agency.

(a) Each agency head shall designate either himself or one of his employees as property manager. The Comptroller shall be informed in writing by the agency head of the name of the property manager and shall be informed of any changes. Where the Comptroller finds that convenience and efficiency will be served, he may permit more than one property manager to be appointed by the agency head.

(b) The property manager shall maintain the required records on all property possessed by the agency and shall be the custodian of all such property.

(c) No person shall entrust State property to any State official or employee or to anyone else to be used for other than State purposes.

(d) When an agency's property is entrusted to some person other than the property manager, the property manager shall require a written receipt for such property executed by the person receiving custody of the property. When the possession of property of one agency is entrusted to another agency on loan, such transfer shall be done only when authorized in writing by the agency head who is lending such property and the written receipt shall be executed by the agency head who is borrowing such property. The property manager is relieved of the responsibility for property which is the subject of such a receipt.

(e) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the Comptroller.

(f) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory within forty-five (45) days after the inventory date for the agency.

(g) The Comptroller shall supervise the property records of each agency so that the records accurately reflect the property currently possessed by the agency. The

Comptroller shall prescribe the methods whereby items of property are deleted from the property records of the agency. Property that has become surplus, or obsolete and no longer serviceable and has been turned over to the Board of Control for disposal under the laws relating thereto shall be deleted from the Comptroller's records upon the authorization of the Board of Control. Property that is missing from the agency or property that is disposed of directly by the agency in a legal manner shall be deleted from the Comptroller's records upon the authorization of the State Auditor.

#### Transfer of Property to Incoming Agency Head

Sec. 6. When there is a change in agency heads or property managers, the incoming agency head or property manager shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of such receipt shall be delivered to the Comptroller, to the State Auditor and to the outgoing agency head or property manager. No further warrants in favor of the outgoing agency head or property manager shall be drawn or paid until the State Auditor has certified that the agency property has been properly accounted for. The State Auditor may make this certification without requiring that a physical inventory be taken.

#### Pecuniary Liability

Sec. 7. Where agency property disappears, whether through theft or other cause, as a result of the failure of the agency head, property manager or agency employee entrusted with the property in writing to exercise reasonable care for its safekeeping, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. Where agency property deteriorates as a result of the failure of the agency head, property manager or agency employee entrusted with the property in writing to exercise reasonable care to maintain and service the property, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. Where agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any State official or employee, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. The liability prescribed by this Section may be found to attach to more than one person in a particular instance; in such cases, the liability shall be joint and several.

#### Reports—Investigation

Sec. 8. When any State property has been lost, destroyed or damaged through the negligence or fault of any State official or employee, the agency head responsible for such property under the provisions of this Act shall immediately report such loss, destruction, or damage to the State Auditor. Upon learning in any manner of such property loss, destruction, or damage, the State Auditor shall inves-

tigate the matter. If the investigation discloses that an injury has been sustained by the State through the fault of a State official or employee, the State Auditor shall make written demand upon such State official or employee for reimbursement to the State for the loss so sustained.

#### Enforcement of State's Claim

Sec. 9. In case the demand made by the State Auditor, in accordance with this Act, for reimbursement for property loss, destruction, or damage is refused or disregarded by the State official or employee upon whom such demand is made, the State Auditor shall report the facts to the Attorney General. If, after an investigation of the facts, the Attorney General finds that legal liability may be adjudged against the State official or employee, he shall take such legal action to recover the monetary loss of the State property occasioned by the loss, damage or destruction as in his opinion may be deemed necessary. Venue for all such suits instituted against a State official or employee shall lie in the Courts of appropriate jurisdiction of Travis County.

#### Sanctions

Sec. 10. When any agency fails to keep the records required under the provisions of this Act or fails to take the annual physical inventory, the Comptroller may refuse to draw any warrants on behalf of such agency.

#### Information Copy to State Employees

Sec. 11. Each agency head shall distribute a copy of this Act to each official and employee of his agency and shall give a copy to each new employee of the agency.

[Acts 1951, 52nd Leg., p. 602, ch. 356; Acts 1953, 53rd Leg., p. 503, ch. 181, §§ 1, 2; Acts 1961, 57th Leg., p. 165, ch. 85, § 1; Acts 1969, 61st Leg., p. 207, ch. 84, § 1, eff. April 17, 1969.]

#### Art. 6252-6a. Inter-Agency Transfer of Personal Property

Sec. 1. Any agency of the State of Texas as defined by Section 2 of this Act is hereby authorized to transfer any personal property of the state under its control or jurisdiction to any other agency of the State of Texas as defined by Section 2 of this Act, with or without reimbursement between the agencies; provided, however, that the provisions of this Act shall not apply to any real property.

When any personal property under the control or jurisdiction of one agency is transferred to the control or jurisdiction of any other agency pursuant to the provisions of this Act, such transfers shall be immediately and simultaneously reported to the Comptroller of Public Accounts by the transferrer and the transferee on forms prescribed by the Comptroller of Public Accounts, and it shall be the duty of the Comptroller of Public Accounts to adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer made pursuant to this Act is made

with reimbursement from funds deposited in the State Treasury, the transferee shall issue a P-1 Voucher payable to the transferrer, and the Comptroller of Public Accounts shall issue warrants for reimbursement.

Sec. 2. The term "agency" includes any department, board, bureau, commission, court of office, institution, university, college and any service or part of a state institution of higher education.

Sec. 3. The provisions of this Act shall be cumulative of all other laws or parts of laws and all agencies shall have the power to make transfers provided for in Section 1 of this Act independent of any other law general or special.

[Acts 1959, 56th Leg., p. 651, ch. 302.]

#### Art. 6252-6b. Texas Surplus Property Agency

##### Appointment of Board Members and Staff

Sec. 1. There is hereby established a Texas Surplus Property Agency which shall consist of the Board of the Texas Surplus Property Agency, an Executive Director, and such other officers and employees as may be required to effectively carry out the purposes of this Act. The Board of the Texas Surplus Property Agency shall consist of nine members appointed by the Governor. With the advice and consent of the Senate, the Governor shall biennially appoint three members to serve a term of six years, except that when the nine initial appointments are made the Governor shall designate three members to serve for two years, three for four years, and three for six years. The Governor shall also fill by appointment for the unexpired term any vacancy on the Board caused by death, resignation, or inability to serve for any reason. Members shall serve until a successor is appointed and has qualified by taking the oath of office. Appointees shall be outstanding citizens of the state who are knowledgeable in the field of property management. The Chairman of the Board shall be elected by a majority of the members of the Board. Duty on the Board is of benefit to the State of Texas and if there is no conflict between his holding such position and his holding the original office or position for which the nonelective state officer or employee receives salary or compensation, such officer or employee may be appointed to the Board. The Board shall meet quarterly in regular session and on call by the Chairman when necessary for the transaction of agency business. Board members shall serve without pay except they shall be compensated for actual and necessary expenses incurred in the discharge of their official duties.

##### Executive Director

Sec. 2. This Act shall be administered by the Executive Director under operational policies established by the Board. The Executive Director shall be appointed by the Board on the basis of his education, training, experience, and demonstrated ability. He shall serve at

the pleasure of the Board. He shall be secretary to the Board, as well as chief administrative officer of the agency.

#### Administration

Sec. 3. In carrying out his duties under this Act, the Executive Director:

(a) shall, with the approval of the Board, make regulations governing personnel standards; the protection of records and confidential information; establish an accounting system to accurately reflect financial transactions of the agency; and such other regulations as he finds necessary to carry out the purposes of this Act;

(b) shall, with approval of the Board, make long-range and intermediate plans for the scope and development for the management of surplus property and make decisions regarding the allocation of resources in carrying out such plans;

(c) shall, with the approval of the Board, establish appropriate subordinate administrative units;

(d) shall, under personnel policies adopted by the Board, appoint such personnel as he deems necessary for the efficient performance of the functions of the agency;

(e) shall prepare and submit to the Governor an annual report of activities and expenditures;

(f) shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of the Act;

(g) shall take such other action as he deems necessary or appropriate to carry out the purposes of this Act; and

(h) may, with the approval of the Board, delegate to any officer or employee of the agency such of his powers and duties, except the making of regulations and the appointment of personnel, as he finds necessary to carry out the purposes of this Act;

(i) the Executive Director may, in his discretion, bond any person in the employment of the agency handling money, signing checks, or receiving or distributing property under the authority of this Act.

#### Agency Functions

Sec. 4. (a) The agency is designated as the State agency for the purpose of Section 203(j) of the Federal Property and Administrative Services Act of 1949 as amended (hereinafter referred to as the Federal Act), 40 U.S.C. 484(j).<sup>1</sup>

(b) The agency is authorized and empowered (1) to acquire from the United States of America such property as is allocated to it pursuant to the Federal Act, (2) to warehouse such property, and (3) to distribute such property to those entities and institutions which meet the qualifications for eligibility for such property

under the Federal Act, or who may hereafter meet such qualifications.

(c) The agency is authorized to disseminate information and assist potential applicants concerning availability of Federal surplus real property, to otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under Section 203(k) of the Act, (40 U.S.C. 484(k)),<sup>2</sup> and subsequently to assist in assuring utilization of the property.

(d) The agency is authorized to engage in activities relative to Federal excess property in connection with the use of such property by other state agencies, institutions, or organizations engaging in or receiving assistance under Federal programs.

(e) The agency may prescribe such rules and regulations as may be needed for the efficient operation of its activities or as may be required by Federal laws and regulations.

(f) The agency may make the necessary certifications and undertake necessary action including investigations, make expenditures and reports which may be required by Federal law or regulations or which are otherwise necessary to provide for the proper and efficient management of the agency's functions, and provide such information and reports pertinent to the State agency's activities as may be required by Federal agencies and departments.

(g) The agency may enter into contracts, and other agreements for and on behalf of the State including the cooperative agreements within the purview of Section 203(n) of the Federal Act (40 U.S.C. 484(n))<sup>3</sup> with Federal agencies, as well as agreements with other State Agencies for Surplus Property or groups and associations thereof which will in any way promote the administration of the agency's functions, provided, however, that Article 666 (Salvage & Surplus Act) and Article 6252-6 (State Property Act), Vernon's Annotated Civil Statutes, relating to the responsibility and accounting for State property shall not be applicable to the agency in the acquisition and disposal of Federal surplus property.

(h) The agency may, subject to the limitations contained in Section 4, paragraph (l) below, acquire and hold title to real property, make capital improvements thereto, and make advance payments of rent for distribution centers, office space, or other facilities required to carry out the functions of the agency as herein provided.

(i) The agency is authorized and empowered to appoint advisory boards or committees, and subject to the limitations below, to employ such other personnel and to fix their compensation and prescribe their duties, as deemed necessary and suitable for the administration of this Act. The positions of all personnel so employed shall be filled by persons selected and appointed on a nonpartisan merit basis, and the agency shall at all times meet the standards for merit systems set forth by the Federal Govern-

ment, by regulation or otherwise, for personnel in the administration of grant-in-aid programs.

(j) The agency is authorized and empowered to act as clearing house of information for the entities and institutions which may be eligible to acquire Federal surplus property, and to assist, as necessary, such entities and institutions in obtaining such property.

(k) The agency in the administration of this Act, shall cooperate to the fullest extent consistent with the provisions of this Act, and shall file a State plan of operation approved by the Executive Director, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards for State agencies prescribed in accordance with the Federal Act.

(l) The agency may assess a service and handling charge or fee for the acquisition, warehousing, distribution, or transfer by the agency and, in the case of real property, such charges and fees shall be limited to the reasonable administrative costs of the agency incurred in effecting transfer. Receipts from such charges or fees are authorized to be available as needed for the operation of the agency.

(m) The charges and fees shall be deposited in a Service Charge Trust Fund. Such fund shall not be a part of the State Treasury or State's assets. Excess moneys in the Fund above normal operation expenses and appropriate reserve may be invested in State or municipal bonds or in such financial institutions as have been approved by the State Treasurer. The interest or earnings accruing thereby shall likewise be an asset of the Service Charge Trust Fund and shall not be a part of the State Treasury or State's assets. If the Fund is used at any time for purposes other than authorized in this Act, by the State or any other agency or instrumentality thereof, such money shall accrue interest as if it were invested as provided above.

<sup>1</sup> 40 U.S.C.A. § 484(j).

<sup>2</sup> 40 U.S.C.A. § 484(k).

<sup>3</sup> 40 U.S.C.A. § 484(n).

#### Transfer From the Texas Surplus Property Agency

Sec. 5. All functions of the Texas Surplus Property Agency established by House Concurrent Resolution No. 24, Regular Session, 61st Legislature, 1969, together with all personnel, property, records, and unexpended balances of funds available or to be made available as of the date of enactment of this Act are hereby transferred to the Texas Surplus Property Agency as of such date. Wherever under existing statutes or resolutions, duties, obligations, and responsibilities are placed upon the Texas Surplus Property Agency such duties, obligations and responsibilities shall hereinafter be assumed and carried out by the Texas Surplus Property Agency. All contracts and agreements between the Texas Surplus Property Agency and the Federal authorities relating to the activities of the Texas Surplus Property

Agency shall be continued for the benefit of the agency.

[Acts 1971, 62nd Leg., p. 59, ch. 32, eff. March 19, 1971.]

Section 6 of the act of 1971 provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 6252-7. Loyalty Oaths

##### Oath of Persons Receiving Salary or Compensation

Sec. 1. No funds of the State of Texas shall be paid to any person as salary or as other compensation for personal services unless and until such person has filed with the payroll clerk, or other officer by whom such salary or compensation is certified for payment, an oath or affirmation stating:

"1. That the affiant is not, and has never been, a member of the Communist Party. (The term 'Communist Party' as used herein means any organization which (a) is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics, or its satellites, or which (b) seeks to overthrow the Government of the United States, or of any State, by force, violence or any other unlawful means); and

"2. That the affiant is not, and, during the preceding five year period, has not been, a member of any organization, association, movement, group or combination which the Attorney General of the United States, acting pursuant to Executive Order No. 9835, March 21, 1947, 12 Federal Register 1935, has designated as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of Government of the United States by unconstitutional means; or, in the event that the affiant has during such five year period been a member of any such organization, association, movement, group or combination, he shall state its name, shall state in detail the circumstances which led him to join it, and shall state that, at the time when he joined and throughout the period during which he was a member, he did not know that its purposes were the purposes which the Attorney General of the United States has designated; and

"3. That the affiant is not, and, during the preceding five year period, has not been, a member of any "Communist Political Organization' or 'Communist Front Organization' registered under the Federal Internal Security Act of 1950 (50 U.S.C.A., sec. 781, et seq.) or required to so register under said Act by final order of the Federal Subversive Activities Control Board; or, in the event that the affiant has during such five year period been a member of

any such organization, he shall state its name, shall state in detail the circumstances which led him to join it, and shall state that, at the time when he joined it and throughout the period during which he was a member, he did not know that its purpose was to further the goals of the Communist Party or that it was controlled by the Communist Party."

#### Lists of Subversive Organizations

Sec. 2. The Department of Public Safety shall obtain a list of the organizations, associations, movements, groups and combinations comprehended by Subdivisions 2 and 3 of Section 1 hereof, and shall furnish a copy of such list to the various agencies which expend funds of this State. Such agencies shall make copies of such list and shall furnish them to their employees in order that the employees can readily perceive whether they can lawfully and truthfully file the oath or affirmation required herein.

#### Oath of Author of School Textbooks

Sec. 3. The State Board of Education shall neither adopt nor purchase any textbook for use in the schools of this State unless and until the author of such textbook files with the Board an oath or affirmation reciting the matters set forth in Subdivisions 1, 2 and 3 of Section 1 hereof; provided, however, that if the publisher of any such textbook shall represent to the Board under oath that the author of any textbook is dead or cannot be located, the Board may adopt and purchase such textbook if the publisher thereof executes an oath or affirmation stating that, to the best of his knowledge and belief, the author of the textbook, if he were alive or available, could truthfully execute the oath or affirmation required by the first clause of this Section 3. If the Board is not satisfied with respect to the truthfulness of any oath or affirmation submitted to it by either an author or publisher of a textbook, it may require that evidence of the truthfulness of such oath or affirmation be furnished it, and it may decline to adopt or purchase such textbook if it is not satisfied from the proof that the oath or affirmation is truthful.

#### Other Loyalty Oaths Superseded

Sec. 4. It is specifically provided, however, that the oath required herein shall supersede all other loyalty oaths now required by law or that may be required in appropriation Acts by the Legislature.

#### Severability of Provisions

Sec. 5. If any portion of this Act should be held to be unconstitutional, the unconstitutionality of such portion shall not affect the validity or application of the remainder of the Act.

[Acts 1953, 53rd Leg., p. 51, ch. 41.]

#### Art. 6252-8. Vacation for Employees Paid on Hourly or Daily Basis

All State departments, institutions, and agencies are hereby authorized to grant to all

employees who are paid on an hourly or daily basis and who have been continuously employed by the State of Texas for six (6) months a vacation with full pay for the same length of time as the vacation granted to employees who are paid on a monthly basis.

[Acts 1953, 53rd Leg., p. 642, ch. 248, § 1.]

#### Art. 6252-8a. Accumulated Vacation and Sick Leave; Payment to Estates of Employees

Sec. 1. "Employee" as used in this Act means any appointed officer or employee in a department of the State who is employed on a basis or a position normally requiring not less than 900 hours per year, but shall not include members of the Legislature or any incumbent of an office normally filled by vote of the people; nor persons on piecework basis; nor operators of equipment or drivers of teams whose wages are included in rental rate paid the owners of said equipment or team; nor any person who is covered by the Judicial Retirement System of the State of Texas; nor any person who is covered by the Teacher Retirement System of Texas, except persons employed by the Teacher Retirement System, the Central Education Agency, the Texas Rehabilitation Commission, and classified, administrative, and professional staff members employed by a State institution of higher education who have accumulated vacation or sick leave, or both, during such employment.

Sec. 2. Upon the death of a state employee, the state shall pay his estate for all of the employee's accumulated vacation leave and for one-half of his accumulated sick leave. The payment shall be calculated at the rate of compensation being paid the employee at the time of his death.

Sec. 3. Funds appropriated for salaries to the department or agency for which the employee worked shall be used in making payments provided for by this Act.

[Acts 1969, 61st Leg., p. 633, ch. 217, eff. May 14, 1969; Acts 1971, 62nd Leg., p. 866, ch. 106, § 1, eff. May 4, 1971.]

#### Art. 6252-9. Repealed by Acts 1973, 63rd Leg., p. 1095, ch. 421, § 13, eff. Jan. 1, 1974

Prior to repeal, this article was amended by Acts 1971, 62nd Leg., p. 2906, ch. 962, § 1; Acts 1971, 62nd Leg., 1st C.S., p. 32, ch. 10, § 1.

See, now, article 6252-9b.

#### Art. 6252-9a. Dual Office Holding

Sec. 1. A nonelective state officer or employee may hold other nonelective offices or positions of honor, trust, or profit under this state or the United States, if his holding the other offices or positions is of benefit to the State of Texas or is required by state or federal law, and if there is no conflict between his holding the office or position and his holding the original office or position for which the officer or employee receives salary or compensation.

Sec. 2. Before a nonelective state officer or employee may accept an offer to serve in other nonelective offices or positions of honor, trust,

or profit, the officer or employee must obtain from the governing body, or if there is no governing body, the executive head of the agency, division, department, or institution with which he is associated or employed, a finding that the requirements of Section 1 of this Act have been fulfilled. The governing body or executive head shall make an official record of the finding and of the compensation to be received by the nonelective officer or employee from such additional nonelective office or position of honor, trust, or profit including specifically salary, bonus, per diem or other type of compensation.

Sec. 3. The governing body or executive head shall promulgate rules and regulations necessary to carry out the purposes of this Act. [Acts 1969, 61st Leg., p. 55, ch. 20, eff. Sept. 1, 1969.]

#### Art. 6252-9b. Standards of Conduct of State Officers and Employees

##### Declaration of Policy

Sec. 1. It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and confidence of the people of Texas in their state government, there are provided standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties. It is the intent of the legislature that this Act shall serve not only as a guide for official conduct of these covered persons but also as a basis for discipline of those who refuse to abide by its terms.

##### Definitions

Sec. 2. In this Act:

(1) "State officer" means an elected officer, an appointed officer, or the executive head of a state agency as defined in this section.

(2) "Elected officer" means:

(A) a member of the legislature;

(B) an executive or judicial officer elected in a statewide election;

(C) a judge of a court of civil appeals, a district court, a court of domestic relations, or a juvenile court created by special law;

(D) a member of the State Board of Education; or

(E) a person appointed to fill a vacancy or newly created office who, if elected rather than appointed, would be an elected officer as defined in paragraph (A), (B), (C), or (D) of this subdivision.

(3) "Appointed officer" means:

(A) the secretary of state;

(B) an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education;

(C) an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state, excluding a person appointed to fill a vacancy in an elective office; or

(D) a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a position as a member of the governing board or commission of a state agency acquired through a method other than appointment.

(4) "Salaried appointed officer" means an appointed officer as defined in this Act who receives or is authorized to receive for his services to the state a salary as opposed to a per diem or other form of compensation.

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Texas Industrial Commission;

(ii) a member of the Texas Aeronautics Commission;

(iii) a member of the Texas Air Control Board;

(iv) a member of the Texas Alcoholic Beverage Commission;

(v) a member of the Finance Commission of Texas;

(vi) a member of the State Building Commission;

(vii) a member of the State Board of Control;

(viii) a member of the Texas Board of Corrections;

(ix) a member of the board of trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway Commission;

(xi) a member of the Industrial Accident Board;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Vending Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Quality Board;

(xxi) a member of the Texas Water Rights Commission;

(xxii) a member of the Coordinating Board, Texas College and University System;

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission; or

(xxvii) a member of the School Land Board.

(B) If any office listed in paragraph (A) of this section is abolished, the term "appointed officer of a major state agency" includes the successor in function to that office, if any, as provided by law.

(C) In defining the term "major state agency," it is the intent of the legislature to limit the application of the financial disclosure requirements of this Act with respect to appointed state officers to those appointees who exercise substantial power and discretion in the implementation of state programs and in the expenditure of significant amounts of public funds. The legislature hereby finds that the exercise of discretion by these appointed state officers in the granting or withholding of licenses or permits, issuance of regulations, rulings, or orders, construction and location of facilities, and in other matters relating to regulation, adjudication, licensing, or expenditure of public funds, has a major impact on every citizen of this state. Therefore, the legislature finds that the potential for abuse of the public trust by these appointed state officers is significantly greater than in the case of appointed officers of other state agencies.

(D) If for any reason the distinction made by this Act between appointed officers of major state agencies and other appointed officers is held to be invalid in a judgment of a court of competent jurisdiction and the judgment becomes final, the provisions of Section 5 of this Act then become applicable to appointed officers of major state agencies as well as other appointed officers.

(6) "Executive head" of a state agency means the director, executive director,

commissioner, administrator, chief clerk, or other individual not within the definition of appointed officer who is appointed by the governing body or highest officer of the state agency to act as the chief executive or administrative officer of the agency. The term includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Texas Education Code, as amended.

(7) "State employee" means a person, other than a state officer, who is employed by:

(A) a state agency;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) either house of the legislature, or any agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library.

(8) "State agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

(9) "Regulatory agency" means any department, commission, board, or other agency, except the secretary of state and the comptroller of public accounts, that:

(A) is in the executive branch of state government; and

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state; and

(D) has constitutional or statutory authority to engage in rulemaking, adjudication, or licensing.

(10) "Regulation" means rulemaking, adjudication, or licensing. For the purpose of this definition:

(i) "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or

describing the organization, procedure, or practice requirements of an agency.

(ii) "Rulemaking" means agency process for formulating, amending, or repealing a rule.

(iii) "Order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing.

(iv) "Adjudication" means agency process for the formulation of an order.

(v) "License" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission.

(vi) "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(11) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit is conducted.

(12) An individual has a "substantial interest" in a business entity if he:

(A) has controlling interest in the business entity;

(B) has ownership in excess of 10 percent of the voting interest in the business entity or in excess of \$25,000 of the fair market value of the business entity;

(C) has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;

(D) holds the position of a member of the board of directors or other governing board of the business entity;

(E) serves as an elected officer of the business entity;

(F) is an employee of the business entity.

(13) "Person" means an individual or a business entity.

(14) A person's natural child, adopted child, or stepchild is his "dependent child" during a calendar year if the person provides over 50 percent of the child's support during the year.

#### Financial Statement to be Filed

Sec. 3. (a) On or before the last Friday in April of each year, every elected officer, sala-

ried appointed officer, appointed officer of a major state agency, and executive head of a state agency shall file with the secretary of state a financial statement complying with the requirements of Section 4 of this Act.

(b) In the case of appointments of salaried appointed officers and appointed officers of major state agencies on and after the effective date of this Act, each appointee shall file the financial statement within 30 days after the date of his appointment or the date he qualifies for the office, or if confirmation by the senate is required, before his confirmation, whichever is earlier.

(c) Whenever a person is appointed or employed as the executive head of a state agency on or after the effective date of this Act, he shall file the financial statement within 45 days after the date he assumes the duties of the position. Each state agency shall immediately notify the secretary of state of the appointment or employment of an executive head of the agency.

(d) Within 30 days after the filing deadline, every person who is a candidate for an office as an elected officer shall file the financial statement. The secretary of state shall grant an extension for good cause shown of not more than 15 days, provided a request for the extension is received prior to the filing deadline for the financial statement.

(e) Except as otherwise provided in this Act, at least 30 days before the deadline date for the filing of a financial statement by each individual required to file, the secretary of state shall mail to the individual two copies of the financial statement form. In the case of candidates other than those covered by Subsection (f) of this section, the forms shall be mailed within 10 days after the filing deadline date. In the case of appointments of salaried appointed officers and appointed officers of major state agencies, the forms shall be mailed within seven days after the date of the appointment, or if the legislature is in session, sooner if possible.

(f) Any person nominated to fill a vacancy in a nomination as a candidate for a position as an elected officer as provided in Section 233, Texas Election Code, as amended (Article 13.56, Vernon's Texas Election Code), must file the financial statement within 15 days after the date on which the certificate of nomination required by Subsection (b) or (c), Section 233, Texas Election Code, as amended (Article 13.56, Vernon's Texas Election Code), is filed. The secretary of state shall send copies of the financial statement form to the nominee by registered or certified mail within five days after the date the certificate of nomination is filed.

(g) If a person has filed a financial statement as required by one subsection of this section covering the preceding calendar year, he is not required to file a financial statement as required by another subsection if before the

deadline for filing under the other subsection he notifies the secretary of state in writing that he has already filed a financial statement under the subsection specified.

(h) A person required to file a financial statement under Subsection (a) of this section may request the secretary of state to grant an extension of time of not more than 60 days for filing the statement. The secretary of state shall grant an extension of not more than 60 days if the request is received prior to the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. Not more than one extension may be given to a person in one year except for good cause shown.

(i) The deadline for filing any statement required by this section is 5 p. m. of the last day designated in the pertinent subsection of this section for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the next day which is not a Saturday or Sunday or enumerated holiday. Any statement required by any provision of this section to be filed within a specified time period shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the statement may show by competent evidence that the actual date of posting was to the contrary.

#### Content of Financial Statement

Sec. 4. (a) The financial statement required herein shall include the account of the financial activity of the person required to file the statement by this Act and the financial activity of his spouse and dependent children over which he had actual control for the preceding calendar year as hereinafter provided.

(b) Where an amount is required to be reported by category, the person filing the statement shall report whether the amount is (1) less than \$1,000, (2) at least \$1,000 but less than \$5,000, or (3) \$5,000 or more. An amount of stock shall be reported by category of number of shares instead of by category of dollar value. Where an amount of stock is required to be reported by category, it shall be reported whether the amount is (1) less than 100 shares, (2) at least 100 but less than 500 shares, or (3) 500 shares or more. Where a description of real property is required to be reported, it shall be reported by number of lots or number of acres, as applicable, in each county and the name of the county.

(c) The account of financial activity referred to in Subsection (a) of this section shall consist of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of any person, business entity, or other organization from whom the person or a business in which he has a substantial interest received a fee as a retainer for a claim on future services in case of need (as opposed to a fee for services on a matter specified at the time of contracting for or receiving the fee), whenever professional or occupational services were not actually performed during the reporting period commensurate to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and category of number of shares of stock of any business entity held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(4) identification of each source and the category of the amount of income in excess of \$500 derived per source from interest, dividends, royalties, and rents;

(5) identification of each person or financial institution to whom a personal note or notes for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold the category of the amount of the net gain or loss realized from such sale;

(7) identification of any person, business entity, or other organization from whom the person or his spouse or dependent children received a gift of money or property in excess of \$250 in value or a series of gifts of money or property, the total of which exceeds \$250 in value received from the same source, and a description of each gift, except gifts received from persons related to the person at any time within the second degree of consanguinity or affinity and campaign contributions which were reported as required by law;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;

(9) identification by description and category of the amount of all assets and liabilities of any corporation in which 50 percent or more of the outstanding stock was held, acquired, or sold;

(10) a list of all boards of directors of which the person is a member and execu-

tive positions which he holds in corporations, firms, partnerships, and proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held.

(d) The financial statement shall be verified.

(e) The secretary of state shall design forms on which financial statements may be made, covering only the items required to be reported by this section, and shall furnish them to all persons required by this Act to file financial statements.

#### Disclosure of Regulated Business Interests

Sec. 5. (a) Every appointed officer who is not required to file a financial statement under Section 3 of this Act and who has, acquires, or divests himself of a substantial interest in a business entity which is subject to regulation by a regulatory agency, or owns a substantial interest in a business entity doing business with any state agency, shall file with the secretary of state at the times specified by this Act, an affidavit:

(1) identifying himself and stating the capacity in which he serves or is about to serve which occasions the filing of the affidavit;

(2) identifying the business entity (or each business entity);

(3) stating the nature of his interest in the business entity;

(4) identifying the regulatory agency or agencies;

(5) describing the manner in which the business entity is subject to regulation;

(6) stating whether the interest is held, or was acquired or divested, and if acquired or divested, when.

(b) The nature of an interest in a business entity shall be described in language at least as specific as the applicable categories of Section 2(12) of this Act.

(c) Every appointed officer to which this section applies who holds office on the effective date of this Act and who has any interest required to be reported pursuant to this section shall file the affidavit within 90 days after the effective date of this Act.

(d) If an appointed officer to which this section applies acquires or divests himself of a substantial interest in a business entity which is subject to regulation by a regulatory agency or which does business with a state agency, he shall file the affidavit within 30 days after the date the interest was acquired or divested.

(e) In the case of appointments made after the effective date of this Act, an appointee who has any interest required to be reported pursuant to this section shall file the affidavit within 30 days after the date of his appointment or the date he qualifies for the office, or

if confirmation by the senate is required, before his confirmation, whichever is earlier.

#### Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation

Sec. 6. (a) This section applies only to an elected or appointed officer who is a member of a board or commission having policy direction over a state agency, excluding officers subject to impeachment under Article XIV,<sup>1</sup> Section 2, of the Texas Constitution. If such an officer has a personal or private interest in any measure, proposal, or decision pending before the board or commission, he shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with the Open Meetings Law (Article 6252-17, Vernon's Texas Civil Statutes) and shall not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) For the purposes of this section, the term "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For the purposes of this section, a person does not have a "personal or private interest" in any measure, proposal, or decision if he is engaged in a profession, trade, or occupation and his interest is the same as all others similarly engaged in the profession, trade, or occupation.

(c) A person who violates this section is subject to removal from office on the petition of the attorney general on his own initiative or on the relation of any other member of the board or commission or on the relation of any citizen. The suit shall be brought in a district court of Travis County or of the county where the violation is alleged to have been committed. If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known his conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section shall be brought within two years after the date the violation is alleged to have been committed, or it is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the constitution or laws of this state.

<sup>1</sup> So in enrolled bill; should read "Article XV".

#### Prohibited Acts

Sec. 7. (a) No member of the legislature shall, for compensation, represent another person before a state agency in the executive branch of state government unless:

(1) the representation is made in a proceeding that is adversary in nature or other public hearing which is a matter of record; or

(2) the representation involves the filing of documents, contacts with such agen-

cy, or other relations, which involve only ministerial acts on the part of the commission, agency, board, department, or officer.

(b) An offense under this section is a Class A misdemeanor.<sup>1</sup>

<sup>1</sup> See Penal Code, § 12.21.

#### Standards of Conduct

Sec. 8. (a) No state officer or state employee should accept or solicit any gift, favor, or service that might reasonably tend to influence him in the discharge of his official duties or that he knows or should know is being offered him with the intent to influence his official conduct.

(b) No state officer or state employee should accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.

(c) No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

(d) No state officer or state employee should make personal investments which could reasonably be expected to create a substantial conflict between his private interest and the public interest.

(e) No state officer or state employee should intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

#### Public Access to Statements

Sec. 9. (a) Financial statements and affidavits filed under this Act are public records. The secretary of state shall maintain the statements and affidavits in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) The secretary of state may, and on notification from a former state officer shall, destroy any financial statements or affidavits filed by a state officer two years after he ceases to be a state officer.

#### Failure to File

Sec. 10. (a) A state officer, candidate, or appointee commits an offense if he knowingly and wilfully fails to file a financial statement or an affidavit as required by this Act. However, in a prosecution for failure to file a financial statement under this section, it is a defense that the defendant did not receive copies of the financial statement form required to be mailed to him by this Act.

(b) An offense under this section is a Class B misdemeanor.<sup>1</sup>

<sup>1</sup> See Penal Code, § 12.22.

#### Venue

Sec. 11. An offense under this Act, including perjury, may be prosecuted in Travis Coun-

ty or in any other county where it may be prosecuted under the Code of Criminal Procedure, 1965, as amended.

#### Additional Duty of Secretary of State

Sec. 12. The secretary of state shall conduct a continuing survey to determine whether all persons required to file financial statements under this Act have actually filed the statements in compliance with this Act. Whenever he determines that a person who is required to file a financial statement has failed to file the statement in compliance with this Act, the secretary of state shall send a written statement of his finding to the appropriate prosecuting attorneys of the state.

#### Repealer

Sec. 13. Chapter 100, Acts of the 55th Legislature, Regular Session, 1957 (Article 6252-9, Vernon's Texas Civil Statutes), is repealed.

#### Severability

Sec. 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

#### Effective Date

Sec. 15. This Act takes effect on January 1, 1974.

[Acts 1973, 63rd Leg. p. 1086, ch. 421, eff. Jan. 1, 1974.]

### Art. 6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation

#### Policy

Sec. 1. The legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to committees of the legislature, and to members of the executive branch, their opinions on legislation, on pending executive actions, and on current issues. To preserve and maintain the integrity of the legislative process, it is necessary that the identity, expenditures, and activities of certain persons who, by direct communication to such officers, engage in efforts to persuade members of the legislative branch or executive branch to take specific actions be publicly and regularly disclosed.

#### Definitions

Sec. 2. As used in this Act:

(1) "Person" means an individual, corporation, association, firm, partnership, committee, club, or other organization, or a group of persons who are voluntarily acting in concert.

(2) "Legislation" means a bill, resolution, amendment, nomination, or other

matter pending in either house of the legislature; any other matter which may be the subject of action by either house, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention.

(3) "Legislative branch" means a member, member-elect, candidate for, or officer of the legislature or a legislative committee, or an employee of the legislature.

(4) "Executive branch" means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of government.

(5) "Communicates directly with" means contact in person or by telephone, telegraph, or letter.

(6) "Compensation" means money, service, facility, or thing of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.

(7) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(8) "Secretary" means the Secretary of State of the State of Texas.

**Persons Required to Register**

Sec. 3. (a) The following persons must register with the secretary as provided in Section 5 of this Act:

(1) a person who makes a total expenditure in excess of \$200 in a calendar quarter, not including his own travel, food, or lodging expenses, or his own membership dues, for communicating directly with one or more members of the legislative or executive branch to influence legislation; and

(2) a person who receives compensation or reimbursement from another to communicate directly with a member of the legislative or executive branch to influence legislation.

(b) A person, other than a member of the judicial, legislative, or executive branch, who, as part of his regular employment, communicates directly with a member of the legislative or executive branch to influence legislation, whether or not any compensation in addition to the salary for that regular employment is received for the communication, must register under Subsection (a), Paragraph (2), of this section.

**Exceptions**

Sec. 4. The following persons are not required to register under the provisions of this Act:

(1) persons who own, publish, or are employed by a newspaper or other regularly published periodical, or a radio station, television station, wire service, or other bona fide news medium which in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements which directly or indirectly oppose or promote legislation, if such persons engage in no further or other activities and represent no other persons in connection with influencing legislation; and

(2) persons appearing before a legislative committee at the invitation of the committee and who receive no compensation for their appearance other than reimbursement from the state for expenses and engage in no further or other activities to influence legislation.

**Registration**

Sec. 5. (a) Every person required to register under Section 3 of this Act shall file a registration form with the secretary within five days after the first undertaking requiring registration except as otherwise provided herein.

(b) The registration shall be written, verified, and shall contain the following information:

(1) the registrant's full name and address;

(2) the registrant's normal business and business address;

(3) the full name and address of each person who made a contribution or paid a membership fee in excess of \$500 during the preceding 12-month period to the registrant or to the person by whom the registrant is reimbursed, retained, or employed regardless of whether it was paid solely to influence legislation;

(4) the full name and address of each person:

(A) by whom the registrant is reimbursed, retained, or employed to directly communicate with a member of the legislative or executive branch to influence legislation; and

(B) on whose behalf the registrant is to communicate directly with a member of the legislative or executive branch to influence legislation; and

(5) a specific description of the matters on which the registrant expects to communicate directly with a member of the legislative or executive branch to influence legislation, including, if known, the bill numbers and whether the registrant supports or opposes each bill listed.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a statement of the number of members of the group and a full description of the methods by

which the registrant develops and makes decisions about positions on policy.

(d) A registrant shall file a supplemental registration indicating any change in the information contained in the registration within 10 days after the date of the change.

#### Activities Report

Sec. 6. (a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section. The report must be filed:

(1) between the 1st and 10th day of each month subsequent to a month in which the legislature is in session covering the activities during the previous month; and

(2) between the 1st and 10th day of each month immediately subsequent to the last month in a calendar quarter covering the activities during the previous quarter.

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation, including expenditures made by others on behalf of the registrant for those direct communications if the expenditures were made with his express or implied consent or were ratified by him. Such report shall include a breakdown of expenditures into the following categories:

- (A) postage and telegraph;
- (B) publication and advertising;
- (C) travel and fees;
- (D) entertainment;
- (E) gifts, loans, and political contributions; and
- (F) other expenditures;

(2) a list of legislation supported or opposed by the registrant, by any person retained or employed by the registrant to appear on his behalf, or by any other person appearing on his behalf, together with a statement of the registrant's position for or against such legislation.

(c) Each person who made expenditures on behalf of a registrant that are required to be reported by Subsection (b) of this section or who has other information required to be reported by the registrant under this section or Section 5 shall provide a full, verified account of his expenditures to the registrant at least seven days before the registrant's report is due to be filed.

#### Termination Notice

Sec. 7. (a) A person who ceases to engage in activities requiring him to register under Section 3 of this Act shall file a written, verified statement with the secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under Section 6 of this Act for any reporting period during which he was registered under this Act.

#### Maintenance of Reports

Sec. 8. (a) All reports filed under this Act are public records and shall be made available for public inspection during regular business hours.

(b) The secretary shall design and provide appropriate forms, covering only the items required to be disclosed under this Act, to be used for the registration and reporting of information required by this Act, maintain registrations and reports in a separate, alphabetical file, purge the files of registrations and reports after five years from the date of filing, and maintain a deputy available to receive registrations and reports and make such registrations and reports available to the public for inspection.

#### Penalty

Sec. 9. (a) A person, as defined in this Act, who violates any provision of this Act other than Section 11 commits a Class A misdemeanor.<sup>1</sup> A person, as defined in this Act, who violates Section 11 of this Act commits a felony of the third degree.<sup>2</sup> Nothing in this Act relieves a person of criminal responsibility under the laws of this state relating to perjury.

(b) A person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation and who fails to file the registration form or activities report required by this Act, in addition, shall pay to the state an amount equal to three times the compensation, reimbursement, or expenditure.

<sup>1</sup> See Penal Code § 12.21.

<sup>2</sup> See Penal Code, § 12.34.

#### False Communications

Sec. 10. No person, for the purpose of influencing legislation, may:

(1) knowingly or wilfully make any false statement or misrepresentation of the facts to a member of the legislative or executive branch; or

(2) knowing a document to contain a false statement, cause a copy of the document to be received by a member of the legislative or executive branch without notifying such member in writing of the truth.

#### Contingent Fees

Sec. 11. No person may retain or employ another person to influence legislation for compensation contingent in whole or in part on the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and no person may accept any employment or render any service for compensation contingent on the passage or defeat of any leg-

islation or the approval or veto of any legislation by the governor.

**Admission to Floors**

Sec. 12. No person who is registered or required to be registered under the provisions of this Act may go on the floor of either house of the legislature while that house is in session except on invitation of that house.

**Enforcement**

Sec. 13. (a) The provisions of this Act may be enforced by the attorney general or any county or district attorney.

(b) A district court in Travis County may issue an injunction to enforce the provisions of this Act on application by any citizen of this state.

**Venue**

Sec. 14. An offense under this Act, including perjury, may be prosecuted in Travis County or in any other county where it may be prosecuted under the Code of Criminal Procedure, 1965, as amended.

**Repealer**

Sec. 15. Chapter 9, Acts of the 55th Legislature, 1st Called Session, 1957 (Article 183-1, Vernon's Texas Penal Code) is repealed.

**Effective Date**

Sec. 16. This Act takes effect January 1, 1974.

**Severability**

Sec. 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 1096, ch. 422, eff. Jan. 1, 1974.]

**Art. 6252-10. Emergency Interim Executive Succession Act**

Sec. 1. This Act shall be known and may be cited as the "Emergency Interim Executive Succession Act."

Sec. 2. Unless otherwise clearly required by the context, the following term as used in this Act is defined as follows:

"Unavailable" means that the Governor, Lieutenant Governor, President Pro Tempore, or others hereafter named in the order of succession to the office of Governor, are not able to exercise the powers and discharge the duties of the office of Governor for any reason specified in the Constitution.

Sec. 3. In the event that the Governor, Lieutenant Governor, or President Pro Tempore of the Senate be unavailable, the Speaker of the House of Representatives, the Attorney General, or the Chief Justice of each of the

Courts of Civil Appeals, in the numerical order of the Supreme Judicial Districts in which they serve, shall, in the order named, if the preceding officers shall be unavailable, exercise the powers and discharge the duties of the office of Governor until a new Governor is elected and qualified or until a preceding named officer becomes available; provided, that only the President Pro Tempore and the Speaker who hold such offices at the time the Governor and Lieutenant Governor first become unavailable shall be qualified under this provision.

[Acts 1959, 56th Leg., p. 527, ch. 232.]

**Art. 6252-10a. Emergency Interim Public Office Succession Act**

**Title**

Sec. 1. This Act shall be known and may be cited as the "Emergency Interim Public Office Succession Act."

**Definitions**

Sec. 2. Unless otherwise clearly required by the context, as used in this Act:

(a) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) "Emergency interim successor" means a person designated pursuant to this Act, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the Constitution and laws of this State, or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) "Office" includes all State offices, the powers and duties of which are defined by the Constitution and laws of this State, except those of the Governor, Members of the Judiciary and Members of the Legislature, and all local offices, the powers and duties of which are defined by the Constitution and laws of this State or by charters and ordinances.

(d) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

**State Officers; Designation of Emergency Interim Successors; Number; Powers and Duties**

Sec. 3. All State officers, subject to such regulations as the Governor or other official authorized under the Constitution or other authority to exercise the powers and discharge the duties of the office of Governor may issue, shall, upon the taking effect of this Act, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Act to insure their current status. The officer shall designate a sufficient number of such emergency interim successors so that there will be not less than three (3) nor more than seven (7) such deputies or emergency interim successors or any combination thereof at any time. In the event that any State officer is unavailable following an attack, and in the event his deputy, if any, is also unavailable, the said powers of his office shall be exercised and said duties of his office shall be discharged by his designated emergency interim successors in the order specified. Such emergency interim successor shall exercise said powers and discharge said duties only until such time as the Governor, under the Constitution or authority other than this Act, or other official authorized under the Constitution or laws of this State to exercise the powers and discharge the duties of the office of Governor may, where a vacancy exists, appoint a successor to fill the vacancy; or until a successor is otherwise appointed or elected and qualified as provided by law; or until the officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

**Local Officers; Resolutions or Ordinances Designating Emergency Interim Successors**

Sec. 4. With respect to local offices for which the legislative bodies of cities, towns, counties and other units of government may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this Act.

**Officers of Political Subdivisions; Designation of Emergency Interim Successors; Number; Powers and Duties**

Sec. 5. The provisions of this Section shall be applicable to officers of political subdivisions including, but not limited to, cities, towns, and counties, as well as fire, power and drainage districts not included in Section 4. Such officers, subject to such regulations as the executive head or heads of the political

subdivision may issue, shall, upon the taking effect of this Act, designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Act to insure their current status. The officer shall designate a sufficient number of persons so that there will be not less than three (3) nor more than seven (7) deputies or emergency interim successors, or any combination thereof, at any time. In the event that any officer of any political subdivision or his deputy provided for pursuant to this Law is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successor in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or laws of this State, or until the officer or his deputy or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of his office.

**Oath; Bond**

Sec. 6. At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. A person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds shall be required to comply with provisions of the law relative to taking office, including the bond and oath.

**Exercise of Powers and Discharge of Duties After Attack; Termination of Authority**

Sec. 7. Officials authorized to act, pursuant to this Act, as emergency interim successors are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as herein defined, has occurred. The Legislature, by concurrent resolution, may at any time terminate the authority of said interim successors to exercise the powers and discharge the duties of office as herein provided.

**Service in Designated Capacity**

Sec. 8. Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this Act, including Section 7 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

**Disputes**

Sec. 9. Any dispute concerning a question of fact arising under this Act with respect to an office in the executive branch of the State Government, except a dispute of fact relative

to the office of Governor, shall be adjudicated by the Governor or other official authorized under the Constitution and laws of this State to exercise the powers and discharge the duties of Governor, and his decision shall be final.

[Acts 1963, 58th Leg., p. 407, ch. 139, eff. Aug. 23, 1963.]

#### Art. 6252-11. Position Classification Act of 1961

##### Title

Sec. 1. This Act may be cited as the "Position Classification Act of 1961."

##### Conformance With Plan; Minimum Salary; Exceptions and Deferments From Plan

Sec. 2. All regular, full-time salaried employments within the departments and agencies of the State specified in Article III, and the Central Education Agency, Deaf and Blind Schools in Article IV, and all such State employments in positions other than for Judges, District Attorneys, and Assistant District Attorneys specified in Article I of the biennial Appropriations Act, shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act, with the exceptions and deferments hereafter provided in this Section.

Effective January 1, 1962, all regular, full-time salaried employments in executive or administrative agencies of the State, regardless of whether their funds are kept inside or outside the State Treasury, shall also conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the General Appropriations Act with the exceptions hereinafter provided in this Section.

It is further provided, however, that no employee who is presently employed by the State shall be paid less through the application of this Act than the salary he received in accordance with the provisions of House Bill No. 4, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, or the minimum of the appropriate salary range specified in the General Appropriations Act effective September 1, 1961, whichever is the higher, so long as said employee remains in such classified position under the Position Classification Plan.

Specifically excepted from the Position Classification Plan hereinafter described are constitutionally named and elective officers and officials; officers appointed by the Governor; the chief executive head of any State agency covered by the first two paragraphs of this Section; teachers in public schools and special schools of the State, and in the State colleges, universities, and other agencies of higher education; research personnel in State colleges, universities, and other agencies of higher education; medical doctors; professional services compensated on a fee basis; hourly employees, part-time, and temporary employees; and such

other positions in the State Government as have heretofore been or as may hereafter be excluded from such Position Classification Plan by executive order of the Governor or by direction of the Legislature.

Deferred from the provisions of such Position Classification Plan until September 1, 1963, are all positions in Article II of the General Appropriations Act covering employments in the State Hospitals and Special Schools and in offices and institutions of the Texas Youth Council except those specifically excluded heretofore in this Section.

Also deferred from the provisions of such Position Classification Plan until such time as it is deemed practical by order of the Governor or by direction of the Legislature to study and make application of such Plan, are all nonacademic employments in the State colleges, universities, and other agencies of higher education.

##### Texas Position Classification Plan, 1961; Joint Recommendations

Sec. 3. The Position Classification Plan established for the State Government by this Act shall be that plan which was filed with the Governor by the Lieutenant Governor and Speaker of the House of Representatives pursuant to the joint recommendations of the Senate Finance Committee and House Appropriations Committee of the Fifty-seventh Legislature under date of May 10, 1961, and entitled "Texas Position Classification Plan, 1961," together with any additions, deletions, or modifications which may be approved by the Classification Officer hereinafter established and pursuant to the provisions of this Act, or pursuant to any future enactments of the Legislature.

##### Conformance of Regular Full-time Salaried Employments With Described Classes of Work; Examination of Expenditures; Report

Sec. 4. Commencing with the effective date of this Act, all regular full-time salaried employments with the exceptions and deferments specified hereinabove shall be made only in conformity with the classes of work described in such Position Classification Plan, and under the titles authorized by such Plan. The State Auditor shall examine or cause to be examined in periodic post-audits of expenditures of State departments and agencies, and by such methods as he deems appropriate and adequate, whether employments have been made in accordance with the provisions of this Act, and shall report the facts as found to the Governor, the Comptroller, and the Legislative Audit Committee.

##### Existing Statutory Authorizations for Employing, Promoting or Dismissing Employees; General Qualifications Requirements; Merit Systems; New Class Description of Work

Sec. 5. Nothing in this Act shall be construed or applied by any officer or employee of the State as interfering in any way with existing statutory authorizations for governing bod-

ies and executive heads to employ such persons as they may choose, or to select for promotion from one class of employment to another such employees as they may choose, or to dismiss from employment by the State such employees as they may choose to dismiss.

It is further provided that wherever the phrase "General Qualifications Requirements," or any words or phrases of similar meaning, are found in the Position Classification Plan established by this Act, such specifications thereunder as may be set forth for experience and training, or for education, or for knowledges, skills and abilities, or for physical conditions, shall only mean those which are commonly desired by employing officers of the State; and such indicated requirements shall not be interpreted as having the force of law.

The preceding two paragraphs of this Section, however, shall not be construed as abrogating statutory authorizations for certain State agencies to operate under employee merit systems as a condition for qualifying for Federal grants-in-aid; and all such merit systems as have been or may hereafter be agreed to by the respective State agencies and agencies of the U. S. Government shall be in full force and effect, subject only to the applicable laws of this State.

Should any governing board or executive head of an agency affected by the provisions of this Act find need for the employment of a person in a class or kind of work which he believes is not described in the Position Classification Plan, such board or executive head shall notify the Classification Officer of the facts, and such Classification Officer shall promptly provide, within the limitations of the General Appropriations Act and subject to the approval of the State Auditor after obtaining the advice of the Legislative Audit Committee, either an existing or a new class description of work and a corresponding salary range which will permit such needed employment. Notification of such action shall be made to the Comptroller of Public Accounts by the Classification Officer. Nothing in this paragraph or in this Act, however, shall be so construed as to authorize an increase in the number of positions or in the amount of appropriations as may be set forth for any such agency in the General Appropriations Act.

*Classification Officer; Qualifications; Duties; Assistant; Use of Data Processing Center; Periodic Studies; Exceptions to or Violations of Plan; Appeals*

Sec. 6. There is hereby established in the office of the State Auditor the position of Classification Officer. The Classification Officer shall be appointed by the State Auditor, subject to the advice and approval of the Legislative Audit Committee. No person shall be appointed to the office of Classification Officer who has not had a minimum of six (6) years experience in position classification or personnel management work, or an equivalent period of experience in related work in State

employment as to peculiarly qualify him for the position. Such Classification Officer shall be paid such annual salary as may be set in the Appropriations Act, and shall have for the performance of his duties such assistance as the State Auditor may assign to him from the appropriations provided for that purpose.

The Classification Officer may, subject to the approval of the State Auditor and the Legislative Audit Committee, appoint a First Assistant Classification Officer to whom he may delegate in his absence statutory authority and responsibility as is provided the Classification Officer in this Act and other acts relating to the Position Classification Plan.

The Classification Officer also may have at his disposal when available without charge the use of the data processing center in the office of the Comptroller of Public Accounts for purposes of processing any position classification data that might be pertinent and useful.

In accordance with the provisions of law, the Classification Officer shall maintain on a current and accurate basis the Position Classification Plan, advise and assist State agencies to insure equitable and uniform application of such Plan, assist in personnel audits to assure conformity, and make such recommendations as he may think necessary and desirable respecting the operation and improvement of the Position Classification Plan to the Governor and the Legislature.

The Classification Officer also shall make periodic studies of salary rates paid in industry and other governmental units for like or similar work performed in the State Government, and shall report his findings and recommendations for the realistic adjustment of State salary ranges to the Governor's Budget Office and to the Legislative Budget Board by not later than October 1st immediately preceding a Regular Session of the Legislature.

When exceptions to or violations of the Position Classification Plan or of prescribed salary ranges are revealed by personnel audits, the Classification Officer shall notify the agency head in writing and specify the points of non-conformity or violation. The executive head of such agency shall then have reasonable opportunity to resolve the exception or end the violation by reassigning the employee to another position title or class consistent with the work actually performed, by changing the employee's title or salary rate to conform to the prescribed Classification Plan and salary range, or by obtaining a new class description of work and salary range to correct the exception or violation.

If no action is taken by the executive head of such agency to correct or end the exception or violation within twenty (20) calendar days following the date of the written notification made by the Classification Officer, such Officer shall make a written report of the facts to the Governor and the Legislative Budget Board. The Governor may then determine, aft-

er obtaining the advice of the Legislative Audit Committee, the action to be taken in correcting the exception or violation and may, within his discretion, direct the Comptroller not to issue payroll warrants for the employee or for the position affected by the exception or violation until such discrepancy has been corrected.

Any decision or finding made by the Classification Officer under the provisions of this Act may be appealed by any employee or by the executive head of any agency to the Legislative Audit Committee under such rules governing appellate procedure as said Committee may adopt.

[Acts 1961, 57th Leg., p. 238, ch. 123.]

#### Art. 6252-11a. State Employees Training Act of 1969

Sec. 1. This Act may be cited as the State Employees Training Act of 1969.

Sec. 2. The Legislature finds that effective state administration is materially aided by programs for the training and education of state administrators and employees and that public moneys spent for these programs serve an important public purpose.

Sec. 3. A state department, institution, or agency may use available public funds to provide training and education for its administrators and employees. Where considered appropriate by the department, institution, or agency, it may expend public funds to pay the salary, tuition and other fees, travel and living expenses, training stipend, training materials costs and other necessary expenses of the instructor, student, and other participant in the training or education program. A department, institution, or agency may enter into an agreement with another state, local, or federal department, institution, or agency, including a state-supported college or university, to present a training or educational program for its administrators and employees or to join in presenting such a program. Among the purposes that may be served by these training and educational programs are preparation to deal with new technological and legal developments, development of additional work capabilities, and increasing the level of competence.

Sec. 4. Public funds may be expended by the department, institution, or agency for the training or education of an administrator or employee only where the training or education is related to the current or prospective duty assignment of the administrator or employee. Where the training or education is so related, the department, institution, or agency may make the administrator's or employee's present duty assignment, in part or in whole, attendance at designated training or education programs.

Sec. 5. Each department, institution, and agency shall make regulations concerning the eligibility of its administrators and employees for training and education supported by it and

the obligations assumed by the administrators and employees upon receiving this training and education. However, no such regulation shall be made effective, and no public funds shall be expended under such regulation, until the regulation is approved in writing by the governor. [Acts 1969, 61st Leg., p. 849, ch. 283, eff. Sept. 1, 1969.]

#### Art. 6252-12. Use of Electronic Data Processing Center by State Agencies

From and after the effective date of this Act every state agency wherever practicable shall use the electronic data processing center operated by the Comptroller of Public Accounts in performing such accounting and data processing activities of the agency as may be practically adapted to the use of this equipment. The Comptroller of Public Accounts shall permit the use of the central electronic computing and data processing center equipment by all other agencies of the state with or without charge, but under such rules and regulations as may insure the proper use and functioning of such equipment for the efficient and economical management of state government.

[Acts 1961, 57th Leg., p. 444, ch. 217, § 1.]

#### Art. 6252-12a. Automatic Data Processing Systems

##### Purpose of Act

Sec. 1. The purpose of this Act is to provide for the orderly development and management of automatic data processing systems in Texas state government, to eliminate duplication in the collection, storage and processing of data, and to increase the accessibility and usefulness of the information to be derived from the data.

Automatic Data Processing Systems Division; Establishment; Director and Analysts

Sec. 2. There shall be established in the office of the State Auditor an Automatic Data Processing Systems Division (hereafter referred to as the Systems Division). For the operation of this Division the Auditor shall employ a Systems Director within limits of legislative appropriations and subject to the prior approval of the Legislative Audit Committee. The Auditor shall also employ highly qualified systems analysts, and such other personnel as he may deem necessary for the Systems Division's successful operation.

##### Duties of Division

Sec. 3. The Systems Division shall have and maintain comprehensive current information relating to all automatic data processing systems, equipment, etc. It shall serve in an advisory capacity in the determining of the actual needs for and the feasibility of all installations of automatic data processing equipment, to the end that each agency should be able to attain most efficient and economical operations in its system of data collecting, processing, and storing.

The Systems Division shall develop and maintain orderly and continuing plans for end-

ing unnecessary duplication, by and between State agencies, of staff and equipment used for data collection, processing, and storage. It shall also advise as to the economic feasibility of the installing, either in an agency or by cooperative agreements between agencies, of automatic data processing services for agencies not having such installations, or having partial installations.

#### Cooperation With Systems Division

Sec. 4. It shall be the duty of each State agency to cooperate fully with the Systems Division to provide full and accurate information of current or planned use of automatic data processing equipment, systems, and staff, and to make available all other information the Division may deem necessary for complete and accurate evaluation of automatic data processing by State agencies, for the development of a continuing plan, and for the possible eventual implementation of a comprehensive Data Processing Center or Centers.

#### Annual Current Status Report; Recommendations

Sec. 5. The Systems Division of the Auditor's office shall submit annually, on or before June 1, to the Legislative Budget Board and the Governor's Budget Division a current status report on the accomplishments of the Systems Division. With the report of the even-numbered years the Division shall also file with the Legislative Budget Board and Governor's Budget Division specific recommendations for the further accomplishing of purposes of this Act.

#### Effective Date

Sec. 6. This Act shall be effective from and after September 1, 1965.

#### Repeal of Conflicting Laws

Sec. 7. Chapter 324, Acts of the 56th Legislature, Regular Session, 1959 (codified as Article 4344b, Vernon's Revised Civil Statutes), is hereby repealed to the extent of conflict with this Act, and all other laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

[Acts 1965, 59th Leg., p. 685, ch. 325, eff. Sept. 1, 1965.]

### Art. 6252-13. Administrative Rules and Regulations; Adoption; Filing

#### Definitions

Sec. 1. For the purpose of this Act:

(a) "Agency" means any state board, commission, department, or officer, authorized by law to make rules, except those in the legislative or judicial branches or institutions of higher education.

(b) "Rule" is hereby defined to mean and shall include only rules and regulations promulgated or adopted by any agency governing or relating to rules of procedure or practice before such agency, or to govern its organization or procedure, including the amendment, change, or repeal

thereof, whether with or without prior hearing; provided that such definition shall not include or be applicable to rules, regulations, orders, rates, standards, or classifications adopted, promulgated, or prescribed by any agency to properly perform its statutory duties or to implement or make specific the law enforced or administered by any such agency, or to rules, regulations, or orders concerning the internal management of the agency and not directly affecting the rights of or procedure available to the public.

#### Adoption of Rules

Sec. 2. In addition to the rule-making requirements imposed or authorized by law:

(a) Each agency shall adopt rules concerning the formal and informal procedures, including rules of practice before the agency. Such rules may include forms and instructions so far as deemed practical.

(b) To assist interested persons dealing with it, each agency shall, so far as deemed practicable, supplement its rules with descriptive statements of its procedures.

(c) Prior to the adoption of any rule as defined in Section 1(b) hereof or the amendment or repeal thereof, the adopting agency shall, so far as practical, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing.

#### Filing and Taking Effect of Rules

Sec. 3. (a) Within ninety (90) days after the effective date of this Act each agency which has not previously filed a copy of any such rule with the Secretary of State shall file in the office of the Secretary of State a certified copy of each rule as defined herein and adopted by it. The Secretary of State shall keep a permanent file, register, or record of such rules open to public inspection.

(b) Each rule adopted after the effective date of this Act shall take effect not less than thirty (30) days after filing.

#### Rules Not in Conformity With Act

Sec. 4. Any rule as defined herein made by any agency not in conformity with this Act shall be void and of no effect.

#### Failure to File Rules; Rules Under Litigation

Sec. 5. All rules, regulations, orders, rates, standards or classifications duly adopted, promulgated or prescribed by any agency to properly perform its statutory duties or to implement or make specific the law enforced or administered by it and in effect on or issued subsequent to August 31, 1961, and prior to the effective date hereof shall not be held invalid by reason of the failure of such agency to file a certified copy of said rule, regulation or order with the Secretary of State as required by

House Bill No. 261, Acts 57th Legislature, Regular Session, 1961, Chapter 274; provided, however, the provisions of this Section shall not apply to any rule, regulation, order, rate, standard or classification, the validity of which was in litigation on August 31, 1961, unless such rule, regulation, order, rate, standard or classification was filed on or before the date on which it was required to be filed by the provisions of House Bill No. 261, Acts 57th Legislature, Regular Session, 1961, Chapter 274.

[Acts 1961, 57th Leg., p. 581, ch. 274; Acts 1962, 57th Leg., 3rd C.S., p. 90, ch. 31, § 1.]

**Art. 6252-14. Denial of Right to Work Because of Age**

Sec. 1. It is hereby declared to be the policy of the State of Texas that no person shall be denied the right to work, to earn a living, and to support himself and his family solely because of age.

Sec. 2. No agency, board, commission, department, or institution of the government of the State of Texas, nor any political subdivision of the State of Texas, shall establish a maximum age under sixty-five (65) years nor a minimum age over twenty-one (21) years for employment, nor shall any person who is a citizen of this State be denied employment by any such agency, board, commission, department or institution or any political subdivision of the State of Texas solely because of age; provided, however, nothing in this Act shall be construed to prevent the imposition of minimum and maximum age restrictions for law enforcement peace officers or for fire-fighters; provided, further, that the provisions of this Act shall not apply to institutions of higher education with established retirement programs.

[Acts 1963, 58th Leg., p. 857, ch. 327, eff. Aug. 23, 1963.]

**Art. 6252-15. Use of State-Owned Aircraft for Political Purposes**

No State-owned aircraft, nor any State funds, shall be used solely for political purposes; providing that if this provision is violated such person so violating this Act shall be civilly liable to the State of Texas for the cost thereof.

[Acts 1965, 59th Leg., p. 1025, ch. 510, § 2, eff. Aug. 30, 1965.]

**Art. 6252-16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin**

**Prohibition on Discriminatory Action by State or Local Government Officers or Employees**

Sec. 1. (a) No officer or employee of the state or of a political subdivision of the state, when acting or purporting to act in his official capacity, may:

(1) refuse to employ a person because of the person's race, religion, color, sex, or national origin;

(2) discharge a person from employment because of the person's race, religion, color, sex, or national origin;

(3) refuse to issue a license, permit, or certificate to a person because of the person's race, religion, color, sex, or national origin;

(4) revoke or suspend the license, permit or certificate of a person because of the person's race, religion, color, sex, or national origin;

(5) refuse to permit a person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state, because of the person's race, religion, color, sex, or national origin;

(6) refuse to permit a person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state, because of the person's race, religion, color, sex, or national origin;

(7) refuse to grant a benefit to; or impose an unreasonable burden upon, a person because of the person's race, religion, color, sex, or national origin;

(8) refuse to let a bid to a person because of the person's race, religion, color, sex, or national origin.

(b) The provisions of (a) of this Section do not apply to a public school official who is acting under a plan reasonably designed to end discriminatory school practices.

**Equitable Remedy**

Sec. 2. Whenever a person has engaged, or there are reasonable grounds to believe that a person is about to engage in an act or practice prohibited by Section 1 of this Act, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In an action commenced under this Section, the court, in its discretion, may allow the prevailing party, other than the state, a reasonable attorney's fee as part of the costs, and the state is liable for costs the same as a private person.

**Penalty**

Sec. 3. A person who knowingly violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail for not more than one year or by both.

**Notice of Alleged Unlawful Employment Practice**

Sec. 4. The District Attorneys and/or County Attorneys of this state are hereby designated as the appropriate state or local official to receive the notice of an alleged unlawful employment practice occurring in this state from the Equal Employment Opportunity Commission as provided for in Public Law 88-352, Title VII, Section 706(c); 78 Stat. 241 (42 U.S.C. 2000e-5).

[Acts 1967, 60th Leg., p. 138, ch. 72, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2994, ch. 989, § 1, eff. Aug. 30, 1971.]

**Art. 6252-17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public**

**Definitions**

**Sec. 1. As used in this Act:**

(a) "Meeting" means any deliberation between a quorum of members of a governmental body at which any public business or public policy over which the governmental body has supervision or control is discussed or considered, or at which any formal action is taken. It shall not be construed that the intent of this definition is to prohibit the gathering of members of the governmental body in numbers of a quorum or more for social functions unrelated to the public business which is conducted by the body or for attendance of regional, state, or national conventions or workshops as long as no formal action is taken and there is no deliberation of public business which will appear on the agenda of the respective body.

(b) "Deliberation" means a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business.

(c) "Governmental body" means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

(d) "Quorum" unless otherwise defined by constitution, charter, rule or law applicable to such governing body, means a majority of the governing body.

**Application of Act**

**Sec. 2.** (a) Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authoriz-

ing the holding of such closed or executive session.

(b) In this Act, the Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature, except as otherwise specifically permitted by the Constitution.

(c) A governmental body may exclude any witness or witnesses from a hearing during examination of another witness in the matter being investigated.

(d) Nothing in this Act shall be construed to affect the deliberation of grand juries.

(e) Private consultations between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty of a public body's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with this Act.

(f) The public may be excluded from that portion of a meeting during which a discussion is had with respect to the purchase, exchange, lease, or value of real property, negotiated contracts for prospective gifts or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the governmental body as between such body and a third person, firm or corporation.

(g) Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

(h) Nothing in this Act shall be construed to require school boards to hold meetings open to the public in cases involving discipline of public school children unless an open hearing is requested in writing by a parent or guardian of the child.

(i) All or any part of the proceedings in any public meeting of any governmental body as defined hereinabove may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction.

(j) Nothing in this Act shall be construed to require governing bodies to deliberate in open meetings regarding the deployment, or specific occasions for implementation, of security personnel or devices.

(k) Nothing in this Act shall be construed to allow a closed meeting of a governing body where such closed meeting is prohibited, or where open meetings are required, by charter.

(l) Whenever any deliberations or any portion of a meeting are closed to the public as permitted by this Act, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements of Section 3A of this Act.

(m) Nothing in this Act shall be construed to require school boards operating under consultation agreements provided for by Section 13.901 of the Texas Education Code to deliberate in open meetings regarding the standards, guidelines, terms, or conditions it will follow or instruct its representatives to follow, in consultation with representatives of employee groups.

(n) Nothing in this Act shall be construed to require an agency wholly financed by Federal funds to deliberate in open meetings.

(o) Nothing in this Act shall be construed to require medical boards or medical committees to hold meetings open to the public in cases where the individual medical and psychiatric records of an applicant for a disability benefit from a public retirement system are being considered.

(p) Nothing in this Act shall be construed to require that interviews or counseling sessions between the members of the Board of Pardons and Paroles and inmates of any facility of the Texas Department of Corrections be open to the public.

#### Mandamus or Injunction to Prevent Closed Meetings

Sec. 3. Any interested person may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this Act by members of a governing body.

#### Notice of Meetings

Sec. 3A. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section.

(b) A State governmental body shall furnish notice to the Secretary of State, who shall then post the notice on a bulletin board to be located in the main office of the Secretary of State at a place convenient to the public.

(c) A city governmental body shall have a notice posted on a bulletin board to be located at a place convenient to the public in the city hall.

(d) A county governmental body shall have a notice posted on a bulletin board located at a place convenient to the public in the county courthouse.

(e) A school district shall have a notice posted on a bulletin board located at a place convenient to the public in its central administrative office and, in addition, shall either furnish a notice to the county clerk in the county in which most, if not all, of the school district's pupils reside or shall give notice by tele-

phone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the school district in providing special notice.

(f) A governmental body of a water district or other district or political subdivision covering all or part of four or more counties shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the Secretary of State, who shall then post the notice on a bulletin board located in the main office of the Secretary of State at a place convenient to the public; and it shall also furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located, who shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(g) The governing body of a water district, other district, or other political subdivision, except a district or political subdivision described in Subsection (f) of this section, shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. The county clerk shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(h) Notice of a meeting must be posted for at least 72 hours preceding the day of the meeting, except that in case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if notice is posted two hours before the meeting is convened. In the event of an emergency meeting, the presiding officer or the member calling such meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

#### Violations and Penalties

Sec. 4. (a) Any member of a governing body who wilfully calls or aids in calling or organizing a special or called meeting or session which is closed to the public, or who wilfully closes or aids in closing a regular meeting or session to the public, or who wilfully participates in a regular, special, or called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of this Act, shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less

than one month nor more than six months, or both.

(b) Any member or group of members of a governing body who conspire to circumvent the provisions of this Act by meeting in numbers less than a quorum for the purpose of secret deliberations in contravention of this Act shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months or both.

#### Partial Invalidity

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1967, 60th Leg., p. 597, ch. 271, eff. May 23, 1967; Acts 1969, 61st Leg., p. 674, ch. 227, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1401, ch. 381, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1789, ch. 527, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 45, ch. 31, §§ 1 to 4 eff. Jan. 1, 1974.]

#### Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies

##### Declaration of Policy

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

##### Definitions

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

(2) "Public records" means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

##### Public Information

Sec. 3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas<sup>1</sup> are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;<sup>2</sup>

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;<sup>3</sup>

(16) the audit working papers of the State Auditor.

(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from individu-

al members or committees of the legislature to use for legislative purposes.

(c) The custodian of the records may in any instance within his discretion make public any information contained within Section 3, Subsection (a) 6, 9, 11, and 15.

(d) It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.

<sup>1</sup> See Title 14 Appendix, foll. art. 320a-1.

<sup>2</sup> See article 581-4, subsec. A.

<sup>3</sup> See article 4477, rule 34a et seq.

#### Application for Public Information

Sec. 4. On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. Nothing in this Act shall authorize any person to remove original copies of public records from the offices of any governmental body without the written permission of the custodian of the records.

#### Custodian of Public Records Described

Sec. 5. (a) The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested; and the custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act.

#### Specific Information Which is Public

Sec. 6. Without limiting the meaning of other sections of this Act, the following cat-

egories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

(2) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies;

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

(4) the names of every official and the final record of voting on all proceedings in governmental bodies;

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates;

(6) the name, place of business, and the name of the city to which local sales and use taxes are credited, if any, for the named person, of persons reporting or paying sales and use taxes under the Limited Sales, Excise, and Use Tax Act;

(7) descriptions of an agency's central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(8) statements of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(9) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

(12) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information currently regarded by agency policy as open to the public.

#### Attorney General Opinions

Sec. 7. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney general shall issue a written opinion based upon the determination made on the request.

#### Writ of Mandamus

Sec. 8. If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

#### Cost of Copies of Public Records

Sec. 9. (a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the custodian of the records and the State Board of Control, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office shall be as otherwise provided by law.

(e) No charge shall be made for one copy of any public record requested from state agencies by members of the legislature in performance of their duties.

(f) The charges for copies made by the various municipal court clerks of the various cities and towns of this state shall be as otherwise provided by ordinance.

#### Distribution of Confidential Information Prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) Any person who violates Section 10(a) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed \$1,000, or by both such fine and confinement.

#### Bond for Payment of Costs for Preparation of Public Records or Cash Prepayment

Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

#### Penalties

Sec. 12. Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

#### Procedures for Inspection of Public Records

Sec. 13. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.

#### Interpretation of This Act

Sec. 14. (a) This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

(b) This Act does not authorize the withholding of information or limit the availability of public records to the public, except as expressly so provided.

(c) This Act does not give authority to withhold information from individual members or

committees of the Legislature of the State of Texas to use for legislative purposes.

(d) This Act shall be liberally construed in favor of the granting of any request for information.

#### Severability

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

[Acts 1973, 63rd Leg., p. 1112, ch. 424, eff. June 14, 1973.]

#### Art. 6252-18. Interpreters for Deaf or Severely Hard-of-Hearing Persons Taking State Examinations

Sec. 1. Any deaf or severely hard-of-hearing person taking a state examination which is a prerequisite for state employment or state licensing is entitled to be furnished with an interpreter upon request.

Sec. 2. Interpreters appointed under this Act shall be paid \$15 for the first hour of interpreting in a calendar day and at the rate of \$5 for each subsequent hour up to a maximum of eight hours in a calendar day.

[Acts 1967, 60th Leg., p. 682, ch. 286, eff. Aug. 28, 1967.]

#### Art. 6252-19. Tort Claims Act

##### Short Title

Sec. 1. This Act shall be known and cited as the Texas Tort Claims Act.

##### Definitions

Sec. 2. The following words and phrases as used in this Act unless a different meaning is plainly required by the context shall have the following meanings:

(1) "Unit of government" or "units of government" shall mean the State of Texas and all of the several agencies of government which collectively constitute the government of the State of Texas, specifically including, but not to the exclusion of, other agencies bearing different designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement districts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation districts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the Constitution of the State of Texas or from laws passed by the Legislature pursuant to such Con-

stitution. Provided, however, no new unit or units of government are hereby created.

(2) "Scope of employment" or "scope of office" shall mean that the officer, agent or employee was acting on behalf of a governmental unit in the performance of the duties of his office or employment or was in or about the performance of tasks lawfully assigned to him by competent authority.

(3) "Officer, agent or employee" shall mean every person who is in the paid service of any unit of government by competent authority, whether full or part-time, whether elective or appointive, and whether supervisory or nonsupervisory, it being the intent of the Legislature that this Act should apply to every person in such service of a unit of government, save and except as herein provided. Such definition, however, shall not include an independent contractor or an agent or employee of an independent contractor, or any person performing tasks the details of which the unit of government does not have the legal right to control.

#### Liability of Governmental Units

Sec. 3. Each unit of government in the state shall be liable for money damages for property damage or personal injuries or death when proximately caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment or office arising from the operation or use of a motor-driven vehicle and motor-driven equipment, other than motor-driven equipment used in connection with the operation of flood-gates or water release equipment by river authorities created under the laws of this state, under circumstances where such officer or employee would be personally liable to the claimant in accordance with the law of this state, or death or personal injuries so caused from some condition or some use of tangible property, real or personal, under circumstances where such unit of government, if a private person, would be liable to the claimant in accordance with the law of this state. Such liability is subject to the exceptions contained herein, and it shall not extend to punitive or exemplary damages. Liability hereunder shall be limited to \$100,000 per person and \$300,000 for any single occurrence for bodily injury or death and to \$10,000 for any single occurrence for injury to or destruction of property.

#### Waiver of Sovereign Immunity

Sec. 4. To the extent of such liability created by Section 3, immunity of the sovereign to suit, as heretofore recognized and practiced in the State of Texas with reference to units of government, is hereby expressly waived and abolished, and permission is hereby granted by the Legislature to all claimants to bring suit against the State of Texas, or any and all other units of government covered by this Act, for all claims arising hereunder.

#### Venue

Sec. 5. All cases arising under the provisions of this Act shall be instituted in the county in which the cause of action or a part thereof arises.

#### Cumulative Remedy

Sec. 6. This Act shall be cumulative in its legal effect and not in lieu of any and all other legal remedies which the injured person may pursue.

#### Laws and Rules Applicable

Sec. 7. The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

#### Unit of Government as Defendant; Service of Citation

Sec. 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the administrative head of the unit of government being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

#### Counsel; Insurance

Sec. 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under which such unit of government is operating; provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing protection for such units of government, their officers, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance, they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim. In the case of suits defended by the Attorney General, he may be fully assisted by counsel provided by insurance carrier. Neither the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

## Compromise and Settlement

Sec. 10. Any and all causes of action brought under the provisions of this Act may be settled and compromised by the unit of government involved when, in the judgment of the Governor, in the case of the state, and in the judgment of the governing body of the unit of government in other cases, such compromise would be to the best interests of such government. It is specifically provided, however, that such approval shall not be required in those instances where insurance has been procured under the provisions of Section 9 hereof.

## Collection of Judgments

Sec. 11. Judgments recovered against units of government pursuant to the provisions of this Act shall be enforced in the same manner and to the same extent as judgments are now enforced against such units of government under the statutes and law of Texas; and no additional methods of collecting judgments are granted by this Act. Provided, however, if the judgment is obtained against a unit of government that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use such methods of collecting said judgment as are provided by the policy or contract and statutes and laws of Texas to the extent of the limits of coverage provided therein. It is expressly provided, however, that judgments under this Act becoming final during any fiscal year need not be paid by such unit of government until the following fiscal year except to the extent that they may be payable by an insurance carrier. For the payment of any final judgment obtained under the provisions of this Act, a unit of government not fully covered by liability insurance is hereby authorized to levy an ad valorem tax, the rate of which, if found by the unit of government to be necessary, may exceed any legal limit otherwise applicable except as may be imposed by the Constitution of the State of Texas. In the event that judgments arising under the provisions of this Act become final against a unit of government in any one fiscal year in an aggregate amount, exclusive of insurance coverage, if any, in excess of one percent of the budgeted tax funds, exclusive of general obligation debt service requirements, of such unit of government for such fiscal year, then such unit of government may pay such judgments over a period of not more than five years in equal annual installments and shall pay interest on the unpaid balance at the rate provided by law.

## Effect of Judgment or Settlement

Sec. 12. (a) The judgment or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of a unit of government whose act or omission gave rise to the claim.

(b) The State or a political subdivision may not require any employee to purchase liability

insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

## Liberal Construction

Sec. 13. The provisions of this Act shall be liberally construed to achieve the purposes hereof.

## Exemptions

Sec. 14. The provisions of this Act shall not apply to:

(1) Any claim based upon an act or omission which occurred prior to the effective date of this Act.

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execution of the lawful orders of any court.

(5) Any claim arising in connection with the assessment or collection of taxes by any unit of government.

(6) Any claim arising out of the activities of the National Guard, the State Militia, or the Texas State Guard, when on active duty pursuant to lawful orders of competent authority.

(7) Any claim based upon the failure of a unit of government to perform any act which said unit of government is not required by law to perform. If the law leaves the performance or nonperformance of an act to the discretion of the unit of government, its decision not to do the act, or its failure to make a decision thereon, shall not form the basis for a claim under this Act.

(8) Any claim arising out of the action of an officer, agent or employee while responding to emergency calls or reacting to emergency situations when such action is in compliance with the laws and ordinances applicable to emergency action.

(9) Any claim based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection or rebellion or arising out of the failure to provide, or the method of providing, police or fire protection.

(10) Any claim arising out of assault, battery, false imprisonment, or any other intentional tort including, but not limited to, disciplinary action by school authorities.

(11) Any claim based upon the theory of attractive nuisance.

(12) Any claim arising from the absence, condition, or malfunction of any traffic or road sign, signal, or warning device unless such absence, condition, or malfunction shall not be corrected by the governmental unit responsible within a reasonable time after notice, or any claim arising from the removal or destruction of such signs, signals or devices by third parties except on failure of the unit of government to correct the same within such reasonable time, after actual notice. Nothing herein shall give rise to liability arising from the failure of any unit of government to initially place any of the above signs, signals, or devices when such failure is the result of discretionary actions of said governmental unit. The signs, signals and warning devices enumerated above are those used in connection with hazards normally connected with the use of the roadway, and this section shall not apply to the duty to warn of special defects such as excavations or roadway obstructions.

#### Individual Immunity

Sec. 15. Notwithstanding any provision hereof, the individual immunity of public officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

#### Notice of Death or Injury

Sec. 16. Except where there is actual notice on the part of the governmental unit that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, any person making a claim hereunder shall give notice of the same to the governmental unit against which such claim is made, reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident. Provided, however, except where there is such actual notice, charter and ordinance provisions of cities requiring notice within a charter period permitted by law are hereby expressly ratified and approved.

#### Payment of Claim Against State Supported College or University

Sec. 17. No claim or judgment against a state-supported senior college or university, under this Act, shall be payable except by a direct appropriation made by the Legislature for the purpose of satisfying claims and/or judgments, except in the event insurance has been acquired as provided in Section 9, in which case the claimant is entitled to payment to the extent of such coverage as in other cases.

#### Exclusions

Sec. 18. (a) This Act shall not apply to any proprietary function of a municipality.

The term "motor-driven equipment" as used herein shall not be construed so as to include medical equipment, such as, but not limited to iron lungs, located in hospitals.

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14(12) hereof.

#### Workmen's Compensation

Sec. 19. Any governmental unit carrying Workmen's Compensation Insurance or accepting the provisions of the Workmen's Compensation Act of the State of Texas shall be entitled to all of the privileges and immunities granted by the Workmen's Compensation Act of the State of Texas to private persons and corporations.

#### Application to School and Junior College Districts

Sec. 19A. The provisions of this Act shall not apply to school districts or to junior college districts except as to motor vehicles.

#### Repealer

Sec. 20. All laws or parts of law, and all enactments, rules and regulations or any and all units of government, and all organic laws of such units of government, in conflict herewith are hereby repealed, annulled and voided, to the extent of such conflict.

#### Severability

Sec. 21. In the event any section, subsection, paragraph, sentence or clause of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected or impaired thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions, if any.

#### Effective Date

Sec. 22. This Act shall be effective from and after January 1, 1970.

[Acts 1969, 61st Leg., p. 874, ch. 292, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 1743, ch. 509, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 77, ch. 50, §§ 1, 2, eff. April 18, 1973.]

#### Art. 6252-19a. Liability Insurance; Operation of Motor Vehicles, Aircraft, Motorboats or Watercraft; State Departments and Agencies; Allowance to Employees

Sec. 1. The State Departments or Agencies who own and operate motor vehicles, aircraft and motorboats or watercraft of all types and sizes shall have the authority to insure their officers and employees from liability arising

out of the use, operation and maintenance of such automobiles, trucks, tractors, power equipment, aircraft and motorboats or watercraft used or which may be used in the operation of such Department or Agency. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

Sec. 2. In case said department elects not to so insure its employees against liability as above mentioned:

An employee of the State of Texas, in addition to any compensation provided in the General Appropriations Act, shall receive as compensation any sum of money expended by such employee for automobile liability insurance required of such employee by the department, agency, commission, or other branch of the state government for which such employee is employed.

Sec. 3. The State Comptroller shall provide the necessary forms to make such claims which shall require a certification from the head of the Department, Agency, Commission or other branch of the State government that such employee is employed; that as a regular part of such employee's duties such employee is required to operate a State-owned motor vehicle, aircraft, motorboat or watercraft; and that such Department, Agency, Commission or other branch of the State government requires such employee to maintain liability insurance as a prerequisite to the operation of the State-owned motor vehicle, aircraft, motorboat or watercraft.

Sec. 4. Such payments are to be charged against the maintenance fund of the department for which such employee is employed.

Sec. 5. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts of negligence of the officers or employees of the state.

[Acts 1969, 61st Leg., p. 2357, ch. 797, eff. June 14, 1969; Acts 1971, 62nd Leg., p. 2493, ch. 816, §§ 1, 2, eff. June 8, 1971.]

#### Art. 6252-20. Complaints Against Law Enforcement Officers; Writing; Signature

In order that a complaint against a law enforcement officer of the State of Texas, including but not limited to officers of the Department of Public Safety and the Liquor Control Board, or against a fireman or policeman may be considered by the head of a state agency or by a chief or head of a fire department or police department, neither of which is under the protection of a civil service statute, the complaint must be placed in writing and signed by the person making the complaint. A copy of the signed complaint must be presented to the

affected officer or employee within a reasonable amount of time after the complaint is filed and before any disciplinary action may be taken against the affected employee.

[Acts 1969, 61st Leg., p. 1333, ch. 407, § 1, eff. June 2, 1969.]

#### Art. 6252-21. Failure to Make or Making False Report as to Use of State Automobile or Truck

##### Report of Use

Sec. 1. Whoever uses an automobile or truck owned by this State for any purpose shall make a written report of such use to the Head of the Department, Institution, Board, Commission or other Agency of this State having charge of such automobile or truck, such reports to be made daily when such vehicles are in use, a separate report being made for each day, and such reports shall be made on forms prescribed by the State Auditor. Such reports shall show the purpose for which such vehicle was used, the mileage traveled, the amounts of gasoline and oil consumed, the passengers carried, and such other information as may be necessary to provide a proper record of the use of such vehicle. Said reports shall be official records of the State and shall be subject to inspection by any official of this State who shall be authorized to audit or inspect claims, accounts or records of any State Department, Institution, Board, Commission or Agency of the State.

##### Penalty for Failure to Make Reports

Sec. 2. Whoever uses any automobile or truck owned by this State for any purpose and fails to make and file a report of such use as required by this Act within ten (10) days after the use of said automobile or truck shall be fined not less than Five Dollars (\$5.00) nor more than One Hundred Dollars (\$100.00).

##### Penalty for Making False Report

Sec. 3. Whoever uses any automobile or truck owned by this State for any purpose and makes a false or fraudulent report of such use shall be fined not less than Five Dollars (\$5.00) nor more than One Hundred Dollars (\$100.00).

[Acts 1931, 42nd Leg., p. 374, ch. 220.]

#### Art. 6252-22. Postage Meters of State; Imprint Plates; Private Use Prohibited

Sec. 1. Each State Department, Board, Commission, or State Educational Institution which has installed a postage meter machine must place an imprint plate on such machine, showing: first, that the mail carried by such postage is official State of Texas mail; and second, that there is a penalty for the unlawful use of such postage meters for private purposes.

Sec. 2. Repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3, eff. Jan. 1, 1974.

Sec. 3. The installation and cost of such imprint plates shall be paid from appropria-

tions for postage and contingent expenses made to the various State Departments, Boards, Commissions, or State Educational Institutions.

[Acts 1943, 48th Leg., p. 231, ch. 147; Acts 1973, 63rd Leg., p. 991, ch. 399, § 3, eff. Jan. 1, 1974.]

#### Art. 6252-23. Representation Before State Agencies; Registration; Violations

##### Definitions

Sec. 1. In this Act, unless the context otherwise requires:

(a) "state agency" means any office, department, commission or board of the executive department of government;

(b) "person" means any individual including a member of the Legislature, legislative employee, state officer or state employee.

##### Registration

Sec. 2. Except as herein provided, every person appearing before a state agency or contacting in person any officer or employee thereof on behalf of any other person, firm, partnership, corporation or association in relation to any case, proceeding, application, or other matter before such agency, shall register in an appropriate record, which shall be maintained by the agency for such purpose, the following information:

(a) the name and address of the registrant;

(b) the name and address of the person, firm, partnership, corporation, or association on whose behalf the appearance or contact is made;

(c) a statement as to whether or not the registrant has received or expects to receive any money, thing of value or financial benefit in return for the services rendered in making the appearance or contact.

This Act shall not apply to officers or employees of a state agency when appearing before or contacting officers or employees of another state agency on official inter-agency matters.

##### Reporting and Filing of Registrations

Sec. 3. Each state agency shall file a report with the Secretary of State between the first and tenth of the month following the close of each calendar quarter. The report shall set forth the names of persons registering with the agency during the preceding quarter, together with the detailed information specified in Section 2 of this Act. Such reports, which shall be considered public records of this state and open to public inspection, shall be appropriately indexed and kept on file in the office of the Secretary of State for a period of four (4) years from the date of filing.

##### Persons Not Required to Register

Sec. 3A. No person shall be required to register if:

(a) the contact with a state agency or its officers or employees is solely for the

purpose of obtaining information, and no attempt is made to influence the action of any officer or employee of such agency;

(b) the contact consists in participating in a public hearing, at which such person enters his appearance at such hearing;

(c) the contact is made in connection with any matter where pleadings or instruments disclosing such person's representation is on file with the agency;

(d) the contact is one for which such person receives no fee, payment, compensation or any thing of value.

##### Penalty

Sec. 4. Any person who fails to register as required by Section 2 of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

[Acts 1957, 55th Leg., 1st C.S., p. 30, ch. 12.]

#### Art. 6252-24. Collecting Debts for Others

Any Justice of the Peace, sheriff, constable or other peace officer in this State, who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, or who shall receive compensation therefor except as prescribed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, and in addition to such fine may be removed from office. Provided, however, that nothing herein shall be construed to prohibit any Justice of the Peace who is authorized by law to act for others in the collection of debts from undertaking such collections where the amount is beyond the jurisdiction of the Justice Court.

[Acts 1929, 41st Leg., p. 483, ch. 227, § 1.]

#### Art. 6252-25. Aid and Compensation to Persons Wrongfully Imprisoned

##### Legislative Finding and Statement of Policy

Sec. 1. The Legislature finds that the people of Texas by adding to the Constitution of the State of Texas, Article III, Section 51-c, on November 6, 1956, have adopted the policy that persons who have served sentences in prison for crimes of which they are not guilty should not bear the loss occasioned by this error, but that the people of the State should provide such persons with compensation to reimburse and compensate them for their losses. It is the purpose of this Act to provide the means whereby such compensation may be obtained by persons so wronged.

**Claimants Entitled to Compensation**

Sec. 2. A person is entitled to compensation provided by this Act:

(a) if he has served, in whole or in part, a sentence in prison under the laws of this State; and

(b) if he pleaded "not guilty" to the charge for which he was convicted and which led to the imprisonment; and

(c) if he is not guilty of the crime for which he was sentenced; and

(d) if he has received a full pardon for the crime and punishment for which he was sentenced.

**Permission to Sue State Granted—Venue—Service**

Sec. 3. Any person who by verified petition alleges that he is entitled to compensation under this Act may bring suit against the State of Texas. This Act grants permission to such persons to sue the State and the State's immunity from suit is hereby waived as to all actions brought under this Act. A person who sues the State under this Act shall bring suit in a court of competent jurisdiction either in the county of his residence at the time such suit is commenced or in a court of competent jurisdiction for Travis County. Service of citation upon the State shall be accomplished by service upon the Attorney General. The Attorney General shall represent the State in any proceeding brought under this Act.

**Proof Required**

Sec. 4. In order to obtain a judgment in his favor, a person who brings suit under this Act must establish by a preponderance of the evidence that he is entitled to compensation under this Act and the amount of compensation to which he is entitled. The judgment of conviction in the trial which resulted in the imprisonment in question is not a defense on the part of the State to a suit brought under this Act, nor is an indictment, information, complaint or other formal accusation any defense.

**Admissible Evidence**

Sec. 5. The record of the trial at which the person bringing suit under this Act was convicted, and the pardon or proclamation issued to him by the Governor are admissible as evidence, and all court papers, orders, docket no-

tations or other writings of record in any court in this State are admissible in evidence in a trial of a suit brought under this Act as proof of the facts set out therein.

**Measure of Damages for Compensation**

Sec. 6. If the jury, or the judge where the case is tried before the judge without a jury, finds that the claimant is entitled to compensation, then the jury or the judge, as the case may be, shall assess the claimant's damages at such a sum of money as will fairly and reasonably compensate him:

(a) for the physical and mental pain and suffering sustained by him as a proximate result of the erroneous conviction or imprisonment from the time of conviction by the trial court;

(b) for all reasonable and necessary medical expenses incurred by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction in the trial court.

It is provided, however, that the judge or jury, as the case may be, shall not assess the claimant's damages under Subsection (a) of this Section 6 at an amount greater than Twenty-five Thousand Dollars (\$25,000). It is further provided that the judge or jury, as the case may be, shall not assess the claimant's total damages under this Act at an amount greater than Fifty Thousand Dollars (\$50,000).

**Limitation of Action**

Sec. 7. Any person claiming compensation under this Act whose claim is based upon a sentence served before the effective date of this Act must bring his action within two years after the effective date of this Act or within two years after he discovered or should have discovered the evidence substantiating his innocence. Any person claiming compensation under this Act whose claim is based upon a sentence served in whole or in part, after the effective date of this Act must bring his action within two years after he ceased serving the sentence of imprisonment or after his release from custody, or within two years after he discovered or should have discovered the evidence substantiating his innocence.

[Acts 1965, 59th Leg., p. 1022, ch. 507, eff. Aug. 30, 1965.]

# TITLE 111

## QUO WARRANTO

### Article

6253. Quo Warranto, When.  
6254 to 6256. Repealed.  
6257. Judgment of Court.  
6258. Repealed.

#### Art. 6253. Quo Warranto, When

If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any in-

dividual relator, may present a petition to the district court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground for the proceeding, he shall grant such leave and order the information to be filed and process to issue.

[Acts 1925, S.B. 84.]

Art. 6254 to 6256. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 6257. Judgment of Court

If any person or corporation against whom any such proceeding is filed shall be adjudged guilty as charged, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise and shall give judgment in favor of the relator for costs of the prosecution.

[Acts 1925, S.B. 84.]

Art. 6258. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Reference to Acts 1925,  
S.B. 84 appears to be in  
error. Art. 6253 and  
6257 codified at Civ. Prac  
and Remedies, §§ 66.001-~~65~~  
66.003. Historical notes  
there refer only to  
1879 Acts, 16<sup>th</sup> Leg S.S. p. 43, ch. 48.

# TITLE 112

## RAILROADS

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### CHAPTER ONE. CHARTER AND AMENDMENTS

Article
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#### Art. 6259. Incorporation

Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad by complying with the requirements of this chapter.

[Acts 1925, S.B. 84.]

#### Art. 6260. Who May Build

No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State.

[Acts 1925, S.B. 84.]

#### Art. 6261. Stock, Subscription and Payment

No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of the road intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid to the directors of such proposed company.

[Acts 1925, S.B. 84.]

#### Art. 6262. Articles of Incorporation

The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.

2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same. Local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.

3. The place at which shall be established and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation.

[Acts 1925, S.B. 84.]

#### Art. 6263. Shall be Submitted to Attorney General

The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of this State, he shall attach thereto a certificate to that effect.

[Acts 1925, S.B. 84.]

#### Art. 6264. Shall be Filed

When said articles have been so examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit signed and sworn to by at least three of the directors named in such articles, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount

subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation.

[Acts 1925, S.B. 84.]

#### Art. 6265. Beginning of Existence

The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State, and the certificate of the Secretary of State under the seal of the State, shall be evidence of such filing.

[Acts 1925, S.B. 84.]

#### Art. 6266. May Proceed to Act

When the articles of incorporation have been so filed and recorded, the persons named as incorporators therein shall thereupon become a body corporate, and authorized to carry into effect the objects of such articles, in accordance with the provisions of this title.

[Acts 1925, S.B. 84.]

#### Art. 6267. Period of Existence

No railroad corporation shall be formed to continue more than fifty years, but such corporation may be renewed from time to time for periods not longer than fifty years.

[Acts 1925, S.B. 84.]

#### Art. 6268. Manner of Renewing

The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular or special meeting of the stockholders, specifying the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular or special meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. Said resolution and certificate shall be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 528, ch. 290, § 1.]

#### Art. 6269. Sale or Conveyance Under Special Law

Whenever a line of railway or any railway properties within this State are by special law authorized to be sold and conveyed, the persons contemplating the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such railway by complying, as far as applicable with the requirements of this chapter. In the formation of such corporation, the requirements of Article 6261 and so much of Article 6264 as relates to the affidavit may be dispensed with, and words applicable to the case of a purchaser may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, in lieu of words applicable to the building or construction of a railway. When such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such railway and the properties pertaining thereto, and all other rights, powers and privileges given by the laws of this State to railway companies. Any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company.

[Acts 1925, S.B. 84.]

#### Art. 6270. Shall Take Subject to Lien

Any company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it is purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the old company, or against a receiver for such company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When a corporation is formed under the provisions of the preceding article, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each railroad operated or owned under such charter, in the same manner as if it were one railroad.

[Acts 1925, S.B. 84.]

**Art. 6271. May Amend Articles, etc.**

Any railroad corporation may amend or change its articles or act of incorporation in the manner following:

1. Such amendment or change shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney General as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the Secretary of State.

5. Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6272. When Shall Not Amend**

Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits.

[Acts 1925, S.B. 84.]

**Art. 6273. May Project, etc., by Amendment**

Any railroad company may, by its original articles of incorporation or by its amendments to its charter, project and provide for the location, construction, owning and operating of branch lines from any point on its main line, or from points on its branch line, constructed or projected, to other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same, or from the branch line, if it commences at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and, may by amendment to its charter, provide for the continuation in its general course of the main line.

[Acts 1925, S.B. 84.]

**Art. 6274. Branch Line Requirements**

Any such corporation making such amendment to its charter shall complete and put in

good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each succeeding year until the entire extent of the projected branch line is completed.

[Acts 1925, S.B. 84.]

**CHAPTER TWO. PUBLIC OFFICES AND BOOKS****Article**

- 6275. To Keep Offices in Texas.
- 6276. Where No Contract.
- 6277. Shops, etc.
- 6278. Officers to Keep Offices in Texas.
- 6279. Forfeiture.
- 6280. To Do Repair Work in Texas.
- 6281. Books.
- 6282. President Shall Report.
- 6283. Books Open to Inspection.
- 6284. Penalty for Failure.
- 6285. Duties of Attorney General.
- 6286. Change of General Offices, etc., Prohibited.
- 6287. Domicile of the Corporation.

**Art. 6275. To Keep Offices in Texas**

Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration.

[Acts 1925, S.B. 84.]

**Art. 6276. Where No Contract**

If said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad company may designate to be on its line of railway.

[Acts 1925, S.B. 84.]

**Art. 6277. Shops, etc.**

Such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and roundhouses, or either are located on the line of railroad in a county which has aided such railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization.

[Acts 1925, S.B. 84.]

**Art. 6278. Officers to Keep Offices in Texas**

Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place.

[Acts 1925, S.B. 84.]

**Art. 6279. Forfeiture**

Each railroad company chartered by this State, or owning, operating, or controlling any line of railroad within this State, which shall violate any provision of this chapter shall forfeit the charter by which it operates its railroad in Texas to the State of Texas. The Attorney General shall, upon the application of an interested party, or on his own motion, proceed at once against every offending railroad company owning, operating or controlling any line of railway within this State and violating any provision of this law, by quo warranto to

forfeit the charter of such railroad company. In addition to forfeiting the charter to that part of the railroad situated within this State, such offending railroad company shall be subject to a penalty of five thousand dollars for each day it violates any provision of this chapter; such penalty to be recovered by suit in the name of the State of Texas to be filed by the Attorney General. Any money recovered from any railroad company under the provisions of this law shall be paid into the State Treasury and become a part of the available public free school fund. A judgment of the court forfeiting the charter of a railroad company shall allow six months from the date of the judgment within which to comply with this law, and if it shall comply within said time no forfeiture shall occur; but if it fails to so comply, then the judgment shall be final.

[Acts 1925, S.B. 84.]

**Art. 6280. To Do Repair Work in Texas**

All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment owned or leased by said corporation in this State, when such rolling stock is within this State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. This article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State.

[Acts 1925, S.B. 84.]

**Art. 6281. Books**

The principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted at the public or general offices of said railroad companies in Texas, established as provided for in this chapter, by duly authorized officers and agents of said corporations. At said offices there shall be kept for the inspection of stockholders of such corporation, books in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.

4. The transfer of stock with the date of the transfer.

5. The amount of its assets and liabilities.

6. The names and places of residence of each of its officers.

[Acts 1925, S.B. 84.]

#### Art. 6282. President Shall Report

The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such other matters and things as may be inquired about by said Comptroller or Governor.

[Acts 1925, S.B. 84.]

#### Art. 6283. Books Open to Inspection

The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. The legislature may, by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary.

[Acts 1925, S.B. 84.]

#### Art. 6284. Penalty for Failure

If said railroad or other corporation shall fail or refuse to comply with any provision of the three preceding articles, it shall be liable to pay to the State of Texas, the sum of one thousand dollars for each month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State. An honest mistake in the entries in its books shall not subject a railroad company to such penalties.

[Acts 1925, S.B. 84.]

#### Art. 6285. Duties of Attorney General

The Attorney General shall bring suit against said corporation, and prosecute it to judgment for any violation of any provision of this chapter.

[Acts 1925, S.B. 84.]

#### Art. 6286. Change of General Offices, etc., Prohibited

After the passage of this act, no railroad company shall change the location of its general offices, machine shops, round houses, or home terminals, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers, and to purchasers of the franchises and properties of railroad companies, and to new corporations, formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices, machine shops, round

houses, or Home Terminals to previous locations, when ordered or required under judgments in suits now pending in trial or appellate courts.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 337, ch. 156, § 1.]

#### Art. 6287. Domicile of the Corporation

The public office of a railroad corporation shall be considered the domicile of such corporation.

[Acts 1925, S.B. 84.]

### CHAPTER THREE. OFFICERS AND BY-LAWS

#### Article

- 6288. Board of Directors.
- 6289. Election of Directors.
- 6290. Other Officers Elected.
- 6291. False Dividend.
- 6292. False Representation.
- 6293. By-laws.

#### Art. 6288. Board of Directors

All the corporate powers of every railroad corporation shall be vested in and be exercised by the legally constituted board of directors. Every such corporation shall have a board of directors of not less than seven (7) nor more than fifteen (15) persons, except in case of railroad corporations conducting common carrier operations on railroad lines comprising a total of two hundred (200) miles, or less, of main track, the number of directors shall be not less than five (5) nor more than nine (9), each of whom shall be a stockholder in said corporation. A majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors.

[Acts 1925, S.B. 84; Acts 1947, 50th Leg., p. 64, ch. 48, § 1.]

#### Art. 6289. Election of Directors

These rules shall govern the election of the board of directors:

1. It shall require a majority in value of the stock of such corporation to elect any member of such board.

2. Such board shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in the manner prescribed by this title and the by-laws of such corporation, and shall hold their office until their successors are elected.

3. In all such elections, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit. Such direc-

tors shall not be elected in any other manner.

4. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in such office. Such provisions in such by-laws shall not be changed except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

5. If an election of directors shall not be made on the day designated by said by-laws for such purpose, the stockholders shall meet and hold an election for directors in such manner as said by-laws shall provide.

[Acts 1925, S.B. 84.]

#### Art. 6290. Other Officers Elected

There shall be a president of the corporation who shall be chosen from and by the board of directors, and such other officers as said by-laws may designate, who may be appointed or elected, and who shall perform such duties and be required to give such security for the faithful performance thereof as required by said by-laws. It shall require a majority of the directors to appoint or elect any officer of the corporation.

[Acts 1925, S.B. 84.]

#### Art. 6291. False Dividend

If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall jointly and severally be liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office. If any of the directors shall be absent at the time of making such dividend, or shall object thereto, and shall within thirty days thereafter, or after their return if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability.

[Acts 1925, S.B. 84.]

#### Art. 6292. False Representation

If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all officers who signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof.

[Acts 1925, S.B. 84.]

#### Art. 6293. By-laws

Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the char-

ter of such company or the laws. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation.

[Acts 1925, S.B. 84.]

### CHAPTER FOUR. STOCK AND STOCKHOLDERS

#### Article

- 6294. Railroad Stock is Personal Estate.
- 6295. Directors May Require Payment.
- 6296. Sale of Unpaid Stock.
- 6297. Books Accessible.
- 6298. Use of Corporate Funds.
- 6299. Liability of Stockholders.
- 6300. Who Are Not Liable.
- 6301. Increasing Capital Stock.
- 6302. Decrease of Capital Stock.
- 6303. Statement to Stockholders.
- 6304. Loans and Interest.
- 6305. Removal of Officers.
- 6306. Issuance of Stock.
- 6307. Fictitious Dividends Void.
- 6308. Penalty.

#### Art. 6294. Railroad Stock is Personal Estate

The stock of a railroad corporation shall be deemed personal estate, and transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid.

[Acts 1925, S.B. 84.]

#### Art. 6295. Directors May Require Payment

The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper.

[Acts 1925, S.B. 84.]

#### Art. 6296. Sale of Unpaid Stock

If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the State having a general circulation in the State; which notice shall name the stock to be sold and the time and place of such sale; and all stocks so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m. and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder.

[Acts 1925, S.B. 84.]

**Art. 6297. Books Accessible**

All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation.

[Acts 1925, S.B. 84.]

**Art. 6298. Use of Corporate Funds**

It shall be unlawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them, to use the same for other than the legitimate purposes of the corporation.

[Acts 1925, S.B. 84.]

**Art. 6299. Liability of Stockholders**

Each stockholder of a railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid.

[Acts 1925, S.B. 84.]

**Art. 6300. Who Are Not Liable**

No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock, shall be considered as holding the same and liable as a stockholder accordingly.

[Acts 1925, S.B. 84.]

**Art. 6301. Increasing Capital Stock**

If the capital stock of a railroad corporation shall be found insufficient for constructing and operating its road, such corporation may increase its capital stock from time to time, subject to the following conditions:

1. Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders called by the directors of the corporation for such purpose.

2. Written notice of such meeting shall be given to each stockholder, served personally or by depositing same in a post office directed to his post-office address, postage prepaid; and also by advertising the same in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any is published therein. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and shall be served or published at least sixty days prior to the day appointed for such meeting.

3. The stock may be increased to any amount required for the purposes mentioned in this article, not exceeding the amount mentioned in the notice so given.

4. Every order or resolution increasing such stock shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded.

[Acts 1925, S.B. 84.]

**Art. 6302. Decrease of Capital Stock**

A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each, and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced.

[Acts 1925, S.B. 84.]

**Art. 6303. Statement to Stockholders**

At the regular annual meeting of the stockholders, the president and directors shall exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. Such president and directors shall furnish similar statements at any special meeting of stockholders when they may require the same.

[Acts 1925, S.B. 84.]

**Art. 6304. Loans and Interest**

At any regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans.

[Acts 1925, S.B. 84.]

**Art. 6305. Removal of Officers**

The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of the stockholders, remove the president or any director or other officer of such

corporation, and elect others instead in accordance with the by-laws of such corporation and this title.

[Acts 1925, S.B. 84.]

#### Art. 6306. Issuance of Stock

No railroad corporation shall issue any stock except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof.

[Acts 1925, S.B. 84.]

#### Art. 6307. Fictitious Dividends Void

All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void.

[Acts 1925, S.B. 84.]

#### Art. 6308. Penalty

Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness.

[Acts 1925, S.B. 84.]

### CHAPTER FIVE. MEETING OF DIRECTORS AND STOCKHOLDERS

#### Article

- 6309. Annual Meeting of Directors.
- 6310. Annual Meeting of Stockholders.
- 6311. Joint Meetings.
- 6312. Quorum.
- 6313. Special Meetings.
- 6314. Proxy Dated.
- 6315. What Stock Shall Not Vote.

#### Art. 6309. Annual Meeting of Directors

The directors of every railroad company shall hold one meeting annually at their office in this State, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper published in this State.

[Acts 1925, S.B. 84.]

#### Art. 6310. Annual Meeting of Stockholders

The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this State; and the board of directors shall cause public notice to be given of the time and place of such meeting for thirty days previously thereto as provided in the preceding article.

[Acts 1925, S.B. 84.]

#### Art. 6311. Joint Meetings

Said annual meeting of the board of directors and of the stockholders may be called to

meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice.

[Acts 1925, S.B. 84.]

#### Art. 6312. Quorum

A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of the stockholders to transact business.

[Acts 1925, S.B. 84.]

#### Art. 6313. Special Meetings

A special meeting of the stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by the stockholders owning not less than one-fourth of all the stock of such company. Notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice. If at any such special meeting so called a majority, in value, of the stockholders, equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as heretofore provided.

[Acts 1925, S.B. 84.]

#### Art. 6314. Proxy Dated

Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time, shall not be voted.

[Acts 1925, S.B. 84.]

#### Art. 6315. What Stock Shall Not Vote

Stock issued within thirty days before any stockholders meeting shall not entitle the holder to vote thereat except at the first stockholders meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock.

[Acts 1925, S.B. 84.]

## CHAPTER SIX. RIGHT OF WAY

## Article

- 6316. Right to Construct.
- 6316a. Right to Construct Spur Tracks.
- 6317. Right of Way Over Public Lands.
- 6318. Lineal Survey.
- 6319. Width of Road.
- 6320. Streams of Water.
- 6321. Crossings.
- 6322. Where Made.
- 6323. Thirty Days for Completion.
- 6324. Distance From Place.
- 6325. Failure, etc.
- 6326. Intersections.
- 6327. Crossings of Public Roads.
- 6328. Culverts or Sluices.
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- 6330. Streets, etc.
- 6331. Other Cases.
- 6332. May Cross Other Railways.
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- 6334. May Take Material.
- 6335. Value and Damages to be Paid.
- 6336. When Corporation and Owner Disagree.
- 6337. Entry Only for Survey.
- 6338. Practice in Case Specified.
- 6339. Right of Way Construed.
- 6340. Right of Way Reserved.

**Art. 6316. Right to Construct**

Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. [Acts 1925, S.B. 84.]

**Art. 6316a. Right to Construct Spur Tracks**

Every railroad company owning, leasing or operating a line of railroad in this State shall have authority and power to construct and operate spur or industrial tracks designed to reach or serve industries or industrial enterprises, such as mills, mines, rock quarries, rock deposits, gravel pits, gravel deposits, smelters, warehouses and other manufacturing or industrial enterprises, over which regular scheduled passenger or freight service will not be performed and for transportation over which only a switching charge, if any, will be made, together with all necessary side tracks and subsidiary or accessory spur tracks, and shall have power and authority under the General Laws of this State relating to railroads to condemn property for rights of way for any and all such tracks hereby authorized. [Acts 1925, 39th Leg., ch. 73, p. 230, § 1.]

**Art. 6317. Right of Way Over Public Lands**

Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

[Acts 1925, S.B. 84.]

**Art. 6318. Lineal Survey**

Every railroad corporation shall have the right to cause such examination and survey for

its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages that may be occasioned thereby.

[Acts 1925, S.B. 84.]

**Art. 6319. Width of Road**

Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law.

[Acts 1925, S.B. 84.]

**Art. 6320. Streams of Water**

Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

[Acts 1925, S.B. 84.]

**Art. 6321. Crossings**

All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals.

[Acts 1925, S.B. 84.]

**Art. 6322. Where Made**

Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired.

[Acts 1925, S.B. 84.]

**Art. 6323. Thirty Days for Completion**

No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thir-

ty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321.

[Acts 1925, S.B. 84.]

#### Art. 6324. Distance From Place

Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed.

[Acts 1925, S.B. 84.]

#### Art. 6325. Failure, etc.

Whenever any railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit.

[Acts 1925, S.B. 84.]

#### Art. 6326. Intersections

Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets.

[Acts 1925, S.B. 84.]

#### Art. 6327. Crossings of Public Roads

Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the

county, and if the county be cast in the suit no costs shall be charged against it.

[Acts 1925, S.B. 84.]

#### Art. 6328. Culverts or Sluices

In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof.

[Acts 1925, S.B. 84.]

#### Art. 6329. Navigable Waters

This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water.

[Acts 1925, S.B. 84.]

#### Art. 6330. Streets, etc.

This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without assent of the governing body of said city or town.

[Acts 1925, S.B. 84.]

#### Art. 6331. Other Cases

In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law.

[Acts 1925, S.B. 84.]

#### Art. 6332. May Cross Other Railways

Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection.

[Acts 1925, S.B. 84.]

#### Art. 6333. Intersections

Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law.

[Acts 1925, S.B. 84.]

#### Art. 6334. May Take Material

Any railroad corporation may enter upon and take from any land adjacent to its road,

earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law.

[Acts 1925, S.B. 84.]

#### Art. 6335. Value and Damages to be Paid

The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material.

[Acts 1925, S.B. 84.]

#### Art. 6336. When Corporation and Owner Disagree

If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right [of] way, and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation.

[Acts 1925, S.B. 84.]

#### Art. 6337. Entry Only for Survey

No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with

and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road.

[Acts 1925, S.B. 84.]

#### Art. 6338. Practice in Case Specified

When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property.

[Acts 1925, S.B. 84.]

#### Art. 6339. Right of Way Construed

The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation.

[Acts 1925, S.B. 84.]

#### Art. 6340. Right of Way Reserved

The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

[Acts 1925, S.B. 84.]

### CHAPTER SEVEN. OTHER RIGHTS OF RAILROAD CORPORATIONS

#### Article

- 6341. Some Rights.
- 6342. Shall Alienate Lands, etc.
- 6343. Apply to All Companies.
- 6344. Right to Erect Buildings, etc.
- 6345. Right to Borrow Money, Issue Bonds, etc.
- 6346. Mortgage by Resolution.
- 6347. May Pay Bonds With Stock.
- 6348. Terminus on Coast Destroyed.
- 6349. Abandonment, Change, or Relocation of Line.
- 6350. Change in City.
- 6351. Eminent Domain.
- 6352. Certain Changes Validated.
- 6353. Hearing of Application.

#### Art. 6341. Some Rights

Railroad corporations shall have the following other rights:

1. To have succession, and in their corporate name may sue and be sued, plead and be impleaded.

2. To have and use a seal, which it may alter at pleasure.

3. To receive and convey persons and property on its railway by the power and force of steam, or by any mechanical power.

4. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject to the provisions of law.

5. Of eminent domain for the purposes prescribed in this title.

6. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.

7. To take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant.

[Acts 1925, S.B. 84.]

#### Art. 6342. Shall Alienate Lands, etc.

All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservation for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the State.

[Acts 1925, S.B. 84.]

#### Art. 6343. Apply to All Companies

The two preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as those corporations that are not so prohibited.

[Acts 1925, S.B. 84.]

#### Art. 6344. Right to Erect Buildings, etc.

Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or

which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employes or other persons, to construct any buildings along the line of their railroad to be occupied by their employes or others except at their respective depot stations and section houses, and at such places shall construct only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter of their employes, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways.

[Acts 1925, S.B. 84.]

#### Art. 6345. Right to Borrow Money, Issue Bonds, etc.

Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of law.

[Acts 1925, S.B. 84.]

#### Art. 6346. Mortgage by Resolution

No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in the manner provided in this title for increasing the capital stock of such corporation. When any such resolution has been so adopted it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded.

[Acts 1925, S.B. 84.]

#### Art. 6347. May Pay Bonds With Stock

The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as the by-laws of such corporation may provide.

[Acts 1925, S.B. 84.]

#### Art. 6348. Terminus on Coast Destroyed

Any railway company in this State having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company

make its terminus at and build its road to said new county site.

[Acts 1925, S.B. 84.]

**Art. 6349. Abandonment, Change, or Relocation of Line**

When any railroad in this State whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within an incorporated city of fifty thousand or more inhabitants according to the preceding Federal census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new relocated line, with the reasons justifying the same; thereupon said Commission shall set down said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing said Commission shall be of the opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize said Commission to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, said Commission shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to said Commission.

[Acts 1925, S.B. 84.]

**Art. 6350. Change in City**

When any railroad corporation or receiver of any railroad in the State desires to change, relocate or abandon any part of its line within any city containing fifty thousand or more inhabitants, according to the preceding Federal census, it shall present its petition therefor to the governing body of such city, said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor, the part of the line sought to be changed, relocated or abandoned, and the new location or arrangements proposed for operation; whereupon such governing body if of

the opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. Thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon said Commission shall set down such application for public hearing upon not less than ten days' notice, and if upon such hearing said Commission shall be of the opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon such railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. No application to alter, change or relocate railway tracks, as contemplated by this article, shall be acted upon by the governing body of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon.

[Acts 1925, S.B. 84.]

**Art. 6351. Eminent Domain**

When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this law to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for right of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purposes connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as the same may be necessary.

[Acts 1925, S.B. 84.]

**Art. 6352. Certain Changes Validated**

All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a population according to the preceding Federal census of fifty thousand inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made hereunder, and such permission or written order of the said Commission, given prior hereto,

shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this law shall not affect any right or rights for damages that any person, firm or corporation may have, or may have had or shall have for damages caused by any such removal, change or abandonment.

[Acts 1925, S.B. 84.]

#### Art. 6353. Hearing of Application

Whenever the governing body of any city containing fifty thousand inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to better serve the public interest, said Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of said Commission such change or relocation would be to the best interest of all parties concerned. No application to alter, change or relocate railway tracks, as contemplated by this article shall be determined upon by said governing body until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of said city.

[Acts 1925, S.B. 84.]

### CHAPTER EIGHT. RESTRICTIONS, DUTIES AND LIABILITIES

#### Article

- 6354. Road to Pass Through County Seat.
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- 6418. Failure to Build and Equip.
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- 6419. Neglect to Make Annual Report.

#### Art. 6354. Road to Pass Through County Seat

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

[Acts 1925, S.B. 84.]

#### Art. 6355. Shall Survey Twenty-Five Miles

Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun. No railroad company shall change its route or depot grounds after the same have been so designated.

[Acts 1925, S.B. 84.]

#### Art. 6356. Subsequent Mileage

Every such corporation shall, on completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles

shall be controlled by the provisions applicable to the first twenty-five miles of the road.

[Acts 1925, S.B. 84.]

#### Art. 6357. Train Regulations

Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission.

[Acts 1925, S.B. 84.]

#### Art. 6358. Action on Abandonment

If any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of Travis County, or of any county through which said railroad may pass, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this law, and if the court shall determine that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this law. The said receiver shall have no connection directly or indirectly with said railroad corporation, manager or receiver prior to the time of his appointment, but shall be a good business man well qualified to perform the duties of said receiver.

Said receiver shall collect freight and passenger rates as prescribed by said Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as the decree of the court may prescribe, all his acts as such receiver.

[Acts 1925, S.B. 84.]

#### Art. 6359. Effect of Preceding Articles

This law shall be considered cumulative of all laws of this State now in force on this subject when not in conflict herewith, but when in conflict herewith, this law shall control; but the provisions hereof shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State.

[Acts 1925, S.B. 84.]

#### Art. 6360. Refusal to Transport

In case of the refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent.

[Acts 1925, S.B. 84.]

#### Art. 6361. Double-Decked Cars for Animals

All railroad companies operating any railroad, or any part thereof, within this State, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this State; the distance between the floor and the second deck shall be the same as the distance between the second deck and the roof; the floor of the second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time, hogs, sheep, goats or calves, in carload lots.

[Acts 1925, S.B. 84.]

#### Art. 6362. Rates of Freight; Penalty

It shall be unlawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep,

hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative.

[Acts 1925, S.B. 84.]

#### Art. 6363. Overcharge

It shall be unlawful for any railroad company in this State, its officers, agents or employés, to charge and collect or to endeavor to charge and collect from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading.

[Acts 1925, S.B. 84.]

#### Art. 6364. Delivery on Payment of Charges

Any railroad company, its officers, agents or employés, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading.

[Acts 1925, S.B. 84.]

#### Art. 6365. Refusal to Deliver Freight

If any railroad company, its officers, agents or employés shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading.

[Acts 1925, S.B. 84.]

#### Art. 6366. Confiscating or Converting Freight

No railroad company or receiver thereof, in this State shall confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the acts of the agents, officers and employés of such carrier or receiver within the apparent scope

of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this article shall not apply to conversion of freight where the same has been damaged or intermingled with other freight in wrecks, nor to refused or unclaimed freight, the delivery of which the railroad is unable to effect.

[Acts 1925, S.B. 84.]

#### Art. 6367. Penalty

In addition to all other remedies or penalties that may be provided by law therefor, the violation of any provision of the preceding article shall subject the railway company, or receiver or other common carrier so offending to a penalty of not less than one hundred and twenty-five nor more than five hundred dollars in favor of the State of Texas, and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof.

[Acts 1925, S.B. 84.]

#### Art. 6368. Badge

Every conductor, baggage master, engineer, brakeman or other servant of such railroad corporation employed in a passenger train, or at its stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters or the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll ticket, or exercise any power of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

[Acts 1925, S.B. 84.]

#### Art. 6369. Baggage

A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

[Acts 1925, S.B. 84.]

#### Art. 6370. Signs at Cross-Roads

Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars;

and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

[Acts 1925, S.B. 84.]

**Art. 6371. Bell; Steam or Air Whistle or Siren; Sounding or Blowing**

A bell of at least thirty (30) pounds weight and a steam whistle, air whistle or air siren shall be placed on such locomotive engine, and the steam whistle, the air whistle or air siren shall be sounded and the bell rung at a distance of at least eighty (80) rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other shall, before reaching such railway crossing be brought to a full stop; and the corporation operating such railways shall be liable for all damages which shall be sustained by any person by reason of any such neglect; the full stop at such crossing may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus or shall have a flagman in attendance at such crossing.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 184, ch. 107, § 1; Acts 1941, 47th Leg., p. 349, ch. 189, § 1.]

**Art. 6372. Headlights**

Every railroad corporation or receiver or lessee thereof, operating any line of railroad in this State, shall equip all locomotive engines used in the transportation of trains over said railroad with electric or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector. This article shall not apply to locomotive engines regularly used in the switching of cars or trains. Any railroad company or the receiver or lessee thereof doing business in the State of Texas, which shall violate any provision of this article, shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such suit may be brought in the name of the State in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or by the county or district attorney in any county in or through which such line of railroad may be operated; and such suit shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

**Art. 6373. Switch Lights**

Every railway corporation operating any line of railway in this State shall place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and keep the same lighted from sunset until sunrise. This article shall not apply to railways which have all their locomotives equipped with electric headlights, nor on rail-

road lines or divisions on which no trains are regularly run or operated at night.

[Acts 1925, S.B. 84.]

**Art. 6374. Derailing Switches on Sidings**

Every railroad corporation operating any line of railway in Texas shall place and maintain good and safe derailing switches on all of their sidings connecting with the main line of such railway and upon which siding cars are left standing. No derailing switches shall be required where the siding connects with the main line on an upgrade in the direction of the main line of one half of one per cent or over, nor on inside tracks at terminal points where regular switching crews are employed.

[Acts 1925, S.B. 84.]

**Art. 6375. Penalty**

Any railway corporation which shall wilfully violate any provision of the two preceding articles shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suits therefor be brought by the Attorney General, or under his direction, in the name of the State of Texas, in Travis County, or in any county through which such railway may run or be operated, and such suits shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

**Art. 6376. Using Tracks to Make or Repair Cars**

No firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars in this State, who shall violate this law shall forfeit and pay a penalty to the State of Texas of not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense.

[Acts 1925, S.B. 84.]

**Arts. 6377, 6378. Repealed by Acts 1965, 59th Leg., p. 302, ch. 134, § 1. Eff. Aug. 30, 1965**

**Art. 6379. Air Brake Inspection**

The air brakes and air brake attachment on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. This article shall not apply to tram roads engaged in hauling logs to saw mills, nor to railroads under forty miles in

length. Any corporation or receiver who operates or causes to be operated any such train without such inspection shall forfeit and pay to the State of Texas a penalty of not less than fifty nor more than one hundred dollars, to be recovered by suit. Each operation of any such train without such inspection first having been so made shall be a separate offense.

[Acts 1925, S.B. 84.]

#### Art. 6380. Full Crew

No railroad company or receiver of any railroad company doing business in this State shall run over its road, or part of its road, outside of the yard limits:

1. Any passenger train with less than a full passenger crew consisting of four persons: one engineer, one fireman, one conductor and one brakeman.

2. Any freight train, gravel train or construction train with less than a full crew consisting of five persons: one engineer, one fireman, one conductor and two brakemen.

3. Any light engine without a full train crew consisting of three persons: one engineer, one fireman and one conductor.

4. The provisions of this article shall not apply to nor include any railroad company or receiver thereof, of any line of railroad in this State, less than twenty miles in length; and nothing in subdivisions one and two hereof shall apply in case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of the yard limits.

Any such company or receiver which shall violate any provision of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Suit for such penalty shall be brought in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or under his direction, or by the county or district attorney in any county in or through which such railroad may be operated. Such suits shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

#### Art. 6381. Ash Pans

No common carrier engaged in moving commerce in this State by railroad shall use in moving such commerce in this State any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employé going under such locomotive. This article shall not apply to any locomotive upon which an ash pan is not necessary by reason of the use of oil, electricity or other such agency in such locomotive. Any such common carrier which shall violate the

provisions of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of this State in Travis County or in any county into or through which such carrier may be operating a line of railroad. Such suit may be brought by the Attorney General or under his direction, or by the county or district attorney in any such county. The same compensation shall be allowed the attorney bringing such suit as provided in Article 6477. "Common carrier" as used in this article shall include the receiver or other person or corporation charged with the duty of managing and operating the business of a common carrier.

[Acts 1925, S.B. 84.]

#### Art. 6382. Brakes

No railroad engaged in intrastate commerce within this State shall use on its lines in moving intrastate traffic within said State any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or run any train in such traffic that has not sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, nor run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, nor run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the Commission may from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased, it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage.

[Acts 1925, S.B. 84.]

#### Art. 6383. Improved Couplers

No common carrier engaged in commerce as aforesaid shall haul or permit to be hauled or used on its line of railroad within this State, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within this State which is not equipped with couplers, coupling automatically by impact, and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles.

[Acts 1925, S.B. 84.]

#### Art. 6384. Drawbar of Engine

No common carrier engaged in commerce as aforesaid shall use in moving intrastate traffic within this State any locomotive, tender, car or similar vehicle, any drawbar of which, when

measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such drawbar more than thirty-four and one-half inches in height.

[Acts 1925, S.B. 84.]

#### Art. 6385. May Refuse Rolling Stock

When any person, firm, company, corporation or receiver engaged in commerce as aforesaid shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of this title, it may lawfully refuse to receive from connecting lines of road or shippers, any locomotives, tenders, cars, or similar vehicles not equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars and similar vehicles as required by law.

[Acts 1925, S.B. 84.]

#### Art. 6386. Rolling Stock

No common carrier, engaged in commerce as aforesaid, shall use in moving intrastate traffic within this State any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups.

[Acts 1925, S.B. 84.]

#### Art. 6387. Penalty

Every such common carrier, whether a co-partnership, a corporation, a receiver or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the State of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of the State of Texas, in Travis County, or in any county into or through which such line of railroad may run, by the Attorney General or under his direction, or by the County or district attorney in the county in which the suit is brought, and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the State, and the fees and compensation so allowed shall not be accounted for under the general fee law.

[Acts 1925, S.B. 84.]

#### Art. 6388. No Risk Assumed

Any employé of any common carrier engaged in any intrastate commerce, as provided in the six preceding articles who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation by such common carrier of any provision of said articles contributed to the injury or death of such employé.

[Acts 1925, S.B. 84.]

#### Art. 6389. Provision for Employés

Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many a<sup>1</sup> five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered and protected from inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, nor other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. Any person, corporation or receiver who shall violate any provisions of this article shall pay to the State a penalty of not less than fifty nor more than one hundred dollars. Each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty. Suit for recovery of penalty hereunder shall be brought by the Attorney General or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fees allowed under the general fee bill.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Should probably read "as."

#### Art. 6390. Sixteen Hours

It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this State, or any officer or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

[Acts 1925, S.B. 84.]

#### Art. 6391. Penalties

Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this State, or any officer or agent of such railroad or receiver who shall violate

any provision of the preceding article shall be liable to a penalty to the State of not to exceed five hundred dollars for each violation. Suit for such penalty shall be brought in the name of the State in Travis County, or in any county into or through which such railroad may run, and may be brought either by the Attorney General, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which such railroad may pass, and such attorney bringing any such suit shall be entitled to one-third of any penalty recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents. The provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; nor to crews of wrecking or relief trains.

[Acts 1925, S.B. 84.]

#### Art. 6392. Carrying Mail

Every such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, the Governor shall appoint three commissioners, who, or a majority of them, after fifteen days written notice to the corporation of the time and place of meeting, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains and fair compensation for the post-office car; and if the Postmaster General shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof and for the service, to be fixed as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 6393. Freight Depots

Railroad companies shall erect at each depot, station, or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares, and merchandise and freight of every description from damage by exposure to weather, stock or otherwise; in default of which such railroad company shall be liable to

the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorneys' fees.

[Acts 1925, S.B. 84.]

#### Art. 6394. Storage

Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon.

[Acts 1925, S.B. 84.]

#### Art. 6395. Passenger Depots

Every railroad company doing business in this State shall keep its depots or passenger houses in this State lighted and warmed, and opened to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with any provision of this article shall forfeit and pay to the State of Texas, the sum of fifty dollars, and shall be liable to the party injured for all damages by reason of such failure.

[Acts 1925, S.B. 84.]

#### Art. 6396. Water Closets

All railroad and railway corporations operating a line of railway in this State for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom, at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employes who have business with such railroads and corporations at such stations.

[Acts 1925, S.B. 84.]

#### Art. 6397. Separate Closets

They shall keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least

thirty minutes before the schedule time for the arrival of its train and after the arrival thereof at said station.

[Acts 1925, S.B. 84.]

#### Art. 6398. Penalties

Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the State of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney of the district including said county, shall, upon credible information furnished him, institute suits in the name of the State of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county. The State shall in no event be liable for any costs in such suit.

[Acts 1925, S.B. 84.]

#### Art. 6399. Switch Cars

When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested to do so, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

[Acts 1925, S.B. 84.]

#### Art. 6400. Cattle-Guards

Every railroad company whose railroad passes through a field or inclosure, shall place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. If such field or inclosure shall be enlarged or extended, or the owner of any land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company shall place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields or such new fields and keep the same in repair. Such cattle-guards or stops shall be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description. If such company fails to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that said enlargement or extension was made capriciously and with intent to annoy and molest such company. If any company neglects to construct the proper cattle-guards and stops and keep the same in repair as required in this article, such company shall be

liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit.

[Acts 1925, S.B. 84.]

#### Art. 6401. Johnson Grass and Thistle

If any railroad or railway company or corporation doing business in this State shall permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by it, any person owning, leasing or controlling land contiguous to said right of way shall recover twenty-five dollars by suit from such company or corporation, and any additional sum as he may have been damaged by reason of said grass or said thistle being permitted to so mature or go to seed; provided that any person owning or controlling land contiguous to said right of way who permits any said grass or thistle to mature or go to seed upon said land shall have no right to such recovery.

[Acts 1925, S.B. 84.]

#### Art. 6402. Killing Stock

Each railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle. If said company fence its road it shall only be liable for injury resulting from a want of ordinary care.

[Acts 1925, S.B. 84.]

#### Art. 6403. Report of Animals Killed

Whenever an animal is killed or found dead upon the railroad or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be made before said animal is buried or otherwise disposed of, and shall send same to the county clerk of the county in which said animal is found or killed within ten days from the date of finding or killing, which description shall be by said county clerk filed and kept of record in his office without exacting any fees from said section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death or value of said animal is in question.

[Acts 1925, S.B. 84.]

#### Art. 6404. Consolidation of Railroad Corporations

"Railroad corporation," or "other corporation," as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or oper-

ate any line of railroad in this State. No railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States.

[Acts 1925, S.B. 84.]

#### Art. 6405. Map and Profile of Road

Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Railroad Commission. Every such map shall be drawn on a scale and on paper to be designated by the Railroad Commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with any provision of this article shall forfeit to the State of Texas any sum not less than five hundred nor more than one thousand dollars; and each day such railroad company fails or refuses to comply with the provisions of this law shall be a separate offense.

[Acts 1925, S.B. 84.]

#### Art. 6406. Contract of Connecting Lines

Any two connecting railroads may enter into a contract whereby any part or all the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other, which contract, however, shall be submitted to the Commission for examination and approval, and when so approved shall be binding, but if said contract be not approved by the Commission, the same shall be void. Any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation.

[Acts 1925, S.B. 84.]

#### Art. 6407. Freight and Passengers From Connecting Lines

All railway companies doing business in this State shall be and they are hereby required to receive from all railway companies with which they may connect at the State line of this State, or at any place within this State, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway in this State, all freights and passengers coming to it from such connecting line, and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this State with which it does business; provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or than it accepts for itself when transported wholly on its own line, no matter on what part the line or in what direction the transporting is done.

[Acts 1925, S.B. 84.]

#### Art. 6408. What Are Connecting Lines

Whenever any two or more railroads doing business in this State shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the State to another point in this State, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such

combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business.

[Acts 1925, S.B. 84.]

#### Art. 6409. Terms, etc.

Every railroad, or person, or corporation, operating a railway for the carriage of freight and passengers in this State shall receive freight, passengers and baggage for transportation to or into this State, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as to bills of lading, way bills, tickets, coupon tickets and baggage checks, that any such person or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this State; and, where railroads within this State receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in anywise resulting from delay; provided that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. If the consignee of the goods fails to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen.

[Acts 1925, S.B. 84.]

#### Art. 6410. Water Craft Freight

Each railway company doing business in this State shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this State, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or com-

pany, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 6411. Penalty

If any railroad company doing business in this State shall fail or refuse to interchange business with any steamship line or company or with any steamboat line or company, or any other water craft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and shall, for every such offense, forfeit and pay to the State of Texas a penalty of not less than five hundred nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties in Article 6477, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law which may be recovered in the name of the corporation, person or persons so suing. Nothing in this article shall be so construed as to prevent the recovery of any damages by an aggrieved person, firm, or corporation accruing by reason of the violation of this article. This and the preceding article shall not have the effect to relieve or waive any right of action by the State, or any other person, firm or corporation for any right, penalty or forfeiture which has arisen, or may arise, under any law of this State. All penalties accruing under said articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

[Acts 1925, S.B. 84.]

#### Art. 6412. Trustee for Connecting Lines

Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of the connecting railways to the extent of the balance due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers liens as already provided by law, and may be enforced

in any court of this State having jurisdiction by law of the subject matter and the parties. [Acts 1925, S.B. 84.]

**Art. 6413. Refusal to Interchange**

If any railway company doing business in this State shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this State, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company, or shall violate in any manner any other provision of this and the three preceding articles, such railway company shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law, which may be recovered in the name of the person or corporation so suing. Nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the three preceding articles.

[Acts 1925, S.B. 84.]

**Art. 6414. Service for Express Business**

Every railroad company operating a railroad within this State shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. Any railroad company which shall fail to comply with the provisions hereof shall be liable to the aggrieved party, in an action for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of this article. The said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt.

[Acts 1925, S.B. 84.]

**Art. 6415. Ticket Agent**

Each railroad company doing business in this State, or the receiver of any such railroad company, through their duly authorized officers, shall provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the au-

thority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. Each such ticket agent shall keep said certificate posted in a conspicuous place in his office, and upon demand shall exhibit it to any person desiring to purchase a ticket, or to any officer of the law.

[Acts 1925, S.B. 84.]

**Art. 6416. Passenger Fare**

The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile.

[Acts 1925, S.B. 84.]

**Art. 6417. Repealed by Acts 1969, 61st Leg., p. 363, ch. 132, § 1, eff. Sept. 1, 1969**

**Art. 6418. Failure to Build and Equip**

If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon. This article

shall apply as well to branch lines as to main lines of railroads.

[Acts 1925, S.B. 84.]

**Art. 6418a. Relief to Railway Corporations Failing to Construct Roads**

Sec. 1. That the time in which any railway corporation chartered the laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road and construct, equip and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January first, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence, or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this Act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A.D., 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A.D., 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its articles of incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of and taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided, that the provisions of this Act shall not apply to any railroad company which

has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto.

[Acts 1927, 40th Leg., p. 357, ch. 240.]

**Art. 6418b. Extension of Time for Construction of Railroads**

Sec. 1. That the time in which any railway corporation chartered under the Laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road, and construct, equip, and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January 1, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence, and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the Law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A. D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by Law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its Articles of Incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of the taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its Articles of Incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every

year thereafter, until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto.

[Acts 1929, 41st Leg., p. 663, ch. 296.]

#### Art. 6419. Neglect to Make Annual Report

Any railroad corporation which shall neglect to make the annual report required by this title to the Comptroller or Governor and which has been notified by the Comptroller or Governor of such failure and shall still neglect to make such report within three months after such notice shall forfeit its charter.

[Acts 1925, S.B. 84.]

### CHAPTER NINE. COLLECTION OF DEBTS AND RIGHTS OF EMPLOYÉS

#### Article

- 6420. Subject to Execution.
- 6421. Road Sold for Debts.
- 6422. New Corporation, How Formed.
- 6423. Jurisdiction.
- 6424. Sale Under Deed of Trust.
- 6425. Judgment, Execution, etc.
- 6426. Unpaid Stock Subscriptions.
- 6427. Old Directors to be Trustees.
- 6428. Suits Not to Abate.
- 6429. Law Not to Apply to State Loans, etc.
- 6430. Reducing Wages.
- 6431. Discharged Employé.

#### Art. 6420. Subject to Execution

The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property. Its real and personal property or any part thereof shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale.

[Acts 1925, S.B. 84.]

#### Art. 6421. Road Sold for Debts

In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgment heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, that said purchaser or purchasers, and associates, if any, shall not be deemed to be the owners of the charter of the railroad company and corporations under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the pur-

chaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by a written instrument signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State. Such charter, together with the powers, rights and privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the provisions and limitations imposed and to be imposed by law. The amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion save that the total incumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6521.

[Acts 1925, S.B. 84.]

#### Art. 6422. New Corporation, How Formed

In case of a sale of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, may form a corporation under the first chapter of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend. The property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold out company and by any receiver thereof and for loss of and damage to the property sustained in the operation of the railroad by the sold out company and by any receiver thereof and for the current expenses of such operation including labor, sup-

plies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved. The amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 6521 of the Revised Statutes of Texas. This and the preceding article shall not be construed to in anywise repeal or impair the provisions of Chapter 12 of this Title except in so far as the same may be changed thereby.

[Acts 1925, S.B. 84.]

#### Art. 6423. Jurisdiction

No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the Federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the Federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization.

[Acts 1925, S.B. 84.]

#### Art. 6424. Sale Under Deed of Trust

Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 73, ch. 48, § 1.]

#### Art. 6425. Judgment, Execution, etc.

Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the

levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made.

[Acts 1925, S.B. 84.]

#### Art. 6426. Unpaid Stock Subscriptions

The sale of the roadbed, track, franchise and chartered rights, as herein provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold out company, as hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 6427. Old Directors to be Trustees

Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature or by some court of competent authority), the directors or managers of the sold out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold out company, and shall have full power to settle the affairs of the sold out company, collect and pay outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold out company, and may be sued as such, and shall be jointly and severally responsible to all creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands.

[Acts 1925, S.B. 84.]

#### Art. 6428. Suits Not to Abate

No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company.

[Acts 1925, S.B. 84.]

#### Art. 6429. Law Not to Apply to State Loans, etc.

The provisions of this law shall not apply to any debt, execution or deed of trust held by the State against any railroad company because of any loan made by the State to any company under the provisions of the Act to provide for the investment of the special school fund, or

any other law which authorizes the loan of money to railroad companies, nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have had upon any road, but the lien of the State and its right to enforce the same shall continue as if this law had never been passed, and as if no sale had been made under the provisions of the same.

[Acts 1925, S.B. 84.]

#### Art. 6430. Reducing Wages

All persons in the employment of such railway company shall receive thirty full days notice from said company immediately prior to the day upon which a reduction is to take effect before their wages shall be reduced. In all cases of reduction the employé shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given. Said notice may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other place where said employés are at work; provided, such employé shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether or not he will accept such reduction; and, if no such information is given such company by such employé, then such employé shall forfeit his right to such notice and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. Any railway company violating or evading any provision of this article shall pay to each employé affected thereby one month's extra wages.

[Acts 1925, S.B. 84.]

#### Art. 6431. Discharged Employé

When a railroad company shall discharge an employé, or when the time of service of such employé shall expire, or when a railroad company shall be due and owing an employé, such railroad company, upon discharge, or upon the termination of the term of such service, or upon maturity of said indebtedness, shall, within fifteen days after the demand therefor upon the nearest station agent of said railroad company, pay to such employé the full amount due and owing him. If said railroad company fails or refuses to pay such employé, then it shall be liable to pay to such employé twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars.

[Acts 1925, S.B. 84.]

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### CHAPTER TEN. LIABILITY FOR INJURIES TO EMPLOYÉS

#### Article

- 6432. Injury to Fellow Servant.
- 6433. Who are Vice-Principals.
- 6434. "Fellow-Servants."
- 6435. Contract Limiting Liability Void.
- 6436. Contributory Negligence.
- 6437. Assumed Risk.
- 6438. Double Header Trains.
- 6439. Liable for Injury or Death of Employé.
- 6440. Contributory Negligence.
- 6441. Assumed Risk.
- 6442. Contract Changing Liability Void.
- 6443. Articles of This Chapter Construed.

#### Art. 6432. Injury to Fellow Servant

Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employé thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employé of such person, receiver or corporation, and the fact that such servants or employés were fellow-servants with each other shall not impair or destroy such liability.

[Acts 1925, S.B. 84.]

#### Art. 6433. Who are Vice-Principals

All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employés of such person, receiver, or corporation, with the authority to direct any other employé in the performance of any duty of such employé, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employés.

[Acts 1925, S.B. 84.]

#### Art. 6434. "Fellow-Servants"

All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employés who do not come within the provisions of this article shall not be considered fellow-servants.

[Acts 1925, S.B. 84.]

#### Art. 6435. Contract Limiting Liability Void

No contract made between the employer and employé based upon the contingency of death or injury of the employé and limiting the lia-

bility of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding.

[Acts 1925, S.B. 84.]

#### Art. 6436. Contributory Negligence

Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employé is caused proximately by his own contributory negligence, except as otherwise provided in this chapter.

[Acts 1925, S.B. 84.]

#### Art. 6437. Assumed Risk

The plea of assumed risk shall not be available as a bar to recovery of damages in any suit brought in any court of this State against any corporation, receiver or other person, operating any railroad, interurban railway or street railway in this State for the recovery of damages for the death or personal injury of any employé or servant caused by the wrong or negligence of such person, corporation or receiver; it being contemplated that while the employé does assume the ordinary risk incident to his employment he does not assume the risk resulting from any negligence on the part of his employer, though known to him.

Where, however, in any such suit, it is alleged and proven that such deceased or injured employé was chargeable with negligence in continuing in the service of any such corporation, receiver or person above named in view of the risk, dangers and hazards of which he knew or must necessarily have known, in the ordinary performance of his duties, such fact shall not operate to defeat recovery, but the same shall be treated and considered as constituting contributory negligence, and if proximately causing or contributing to cause the death or injury in question, it shall have the effect of diminishing the amount of damages recoverable by such employé, or his heirs or representatives in case of the employé's death, only in proportion to the amount of negligence so attributable to such employé.

[Acts 1925, S.B. 84.]

#### Art. 6438. Double Header Trains

Employés of railway companies employed by said companies in the operation of trains within this State, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in the operation of such trains and that such injury was occasioned by reason of the operation of two or more engines on such train instead of one.

[Acts 1925, S.B. 84.]

#### Art. 6439. Liable for Injury or Death of Employé

Every corporation, receiver, or other person, operating any railroad in this State, shall be liable in damages to any person suffering inju-

ry while he is employed by such carrier operating such railroad, or in case of death of such employé, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employé for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employés of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. The amount recovered shall not be liable for debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper. In case of the death of such employé, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them, for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court.

[Acts 1925, S.B. 84.]

#### Art. 6440. Contributory Negligence

In all actions brought against any such common carrier or railroad under or by virtue of any provision of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employé, or where such injuries have resulted in his death, the fact that the employé may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employé; provided, that no such employé who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé.

[Acts 1925, S.B. 84.]

#### Art. 6441. Assumed Risk

In any action brought against any common carrier under or by virtue of any provision of the two preceding articles to recover damages for injuries to or the death of any of its employés, such employé shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé.

[Acts 1925, S.B. 84.]

#### Art. 6442. Contract Changing Liability Void

Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be

void; provided, that, in any action brought against any such common carrier by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employé, or the person entitled thereto, on account of the injury or death for which said action was brought.

[Acts 1925, S.B. 84.]

#### Art. 6443. Articles of This Chapter Construed

Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employés, under other articles of these Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the right of action under any law of this State.

[Acts 1925, S.B. 84.]

### CHAPTER ELEVEN. RAILROAD COMMISSION OF TEXAS

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#### Art. 6444. Terms Defined

The term "Commission" as used in this title means the Railroad Commission of Texas, and the term "Commissioners" means the members of the Railroad Commission of Texas.

[Acts 1925, S.B. 84.]

#### Art. 6445. Power and Authority

Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between

railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law.

[Acts 1925, S.B. 84.]

**Art. 6446. Power to Enforce Rules, etc.**

The Railroad Commission of Texas is hereby vested with full power and authority to do and perform each act and duty authorized, directed or imposed upon it by the provisions of this title, and all railroads, persons, corporations, and associations subject to the control of the Commission shall be subject to the penalties prescribed by law for failure to comply with the rules, orders, directions or requirements of said Commission as severally provided in this title.

[Acts 1925, S.B. 84.]

**Art. 6447. The Commission**

**Election.**—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

**Qualifications.**—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant; or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

**Shall hold no other office, etc.**—No railroad commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.

**Oath, etc.**—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this title, and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

**Organization.**—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They may appoint a secretary at a salary not exceeding \$2,000.00 per annum, and not more than two clerks at salaries not exceeding \$1,500.00 per annum each, and such other experts as may be necessary. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of

five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished with an office at the Capitol, and with necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

**Secretary's duties.**—The secretary shall keep full and correct minutes of all the transactions and proceedings of the Commission, and perform such duties as the Commission may require of him.

**Expenses.**—The Commissioners and their employes shall receive from the State their actual necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission.

**Sessions.**—The Commission may hold its sessions at any place in this State when deemed necessary.

[Acts 1925, S.B. 84.]

**Art. 6447a. Salary of Secretary**

That the salary of the Secretary of the Railroad Commission of Texas shall be such sum as may be appropriated therefor by the Legislature from time to time.

[Acts 1927, 40th Leg., p. 209, ch. 140, § 1.]

**Art. 6448. Duties**

The Commission shall:

1. Adopt all necessary rates, charges and regulations, to govern and regulate freight and passenger traffic, to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic on the different railroads in this State.

2. Fairly and justly classify and subdivide all freight and property of whatever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

3. Fix to each class or subdivision of freight a reasonable rate for each railroad subject to this title for the transportation of each of said classes and subdivisions. Such classifications shall apply to and be the same for all railroads subject to the provisions of this chapter. It may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed by railroads.

4. Fix and establish for all or any connecting lines of railroads of this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more such lines of such railroads.

5. When two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, fix the pro rata part of the charges to be received by each connecting line.

6. From time to time, alter, change, amend or abolish any classification or rate established by it when deemed necessary. Such amended, altered or new classification or rates shall be put into effect in the same manner as the originals.

7. Adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints against the classifications or the rates, the rules, regulations and the determinations of the Commission.

8. Make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays and legal holidays.

9. Make and establish reasonable rates for the transportation of passengers over each railroad subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

10. Require each railway subject to this title to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and to keep them well-lighted and warmed for the comfort and accommodation of the traveling public; and keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by such roads and such railway, and to obey the requirements of the Commission in respect thereto.

11. See that all laws of this State concerning railroads are enforced and that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected; and report all such violations with the facts in its possession to the Attorney General or other officer charged with the enforcement of the law. It shall investigate all complaints against all railroad companies. Suits between the State and a railroad shall have precedence in the courts.

[Acts 1925, S.B. 84.]

#### Art. 6449. Notice

Before any rates shall be established, the Commission shall give each railroad company

to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place; and it shall have process to enforce the attendance of its witnesses, which shall be served as in civil cases.

[Acts 1925, S.B. 84.]

#### Art. 6450. Rules for Hearing, etc.

The Commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; and no person shall be denied admission at such investigation.

[Acts 1925, S.B. 84.]

#### Art. 6451. May Administer Oaths, etc.

Each Commissioner, for the purposes mentioned in this chapter, shall have power to administer oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district court.

[Acts 1925, S.B. 84.]

#### Art. 6452. Rates Conclusive

In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by the Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for the purpose in the manner prescribed by the two succeeding articles.

[Acts 1925, S.B. 84.]

#### Art. 6453. Appeal

If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at either of its terms; and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending;

provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. Provided further that no preliminary injunction shall be issued without notice to the opposite party and that no temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be enforced with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

[Acts 1925, S.B. 84.]

#### Art. 6454. Burden of Proof

The burden of proof shall rest upon the plaintiff to show the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

[Acts 1925, S.B. 84.]

#### Art. 6455. Schedule of Rates

The Commission shall, when the classifications and schedule of rates herein provided are prepared and adopted, furnish each railroad affected thereby which is subject to the provisions of this title with a complete schedule in suitable form, showing the classification of freight made by it and the rates fixed to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in Texas, or to any agent of said company in this State; which schedule, rules, and regulations shall take effect at the

date fixed by the Commission, not less than twenty days after the date of service.

[Acts 1925, S.B. 84.]

#### Art. 6456. Schedule to be Printed and Posted

Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public.

[Acts 1925, S.B. 84.]

#### Art. 6457. May Abolish or Alter Regulations

The Commission may at any time abolish, alter, or in any manner amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road affected as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to and with the consent of the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6458. Emergency Freight Rates

The Commission may prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and fix freight rates where none exist. Said rates so made, shall take effect at such time and remain in force for such length of time as the Commission may prescribe.

[Acts 1925, S.B. 84.]

#### Art. 6459. Temporary Tariffs

The Commission shall have power to make temporary freight and passenger tariffs, to take effect at such times as said Commission shall fix whenever an emergency arises, the sufficiency of which shall be judged of by said Commission. In order that justice may be done or injury prevented any person, place or locality, said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists.

[Acts 1925, S.B. 84.]

#### Art. 6460. Complainants

Any person, firm, corporation, or association, body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or any provision of this title, for which penalty is provided, may apply to the Commission under such rules as the Commission may prescribe.

[Acts 1925, S.B. 84.]

**Art. 6461. Procedure**

If there shall appear to the Commission any reasonable grounds for investigating such complaint; (1) it shall give at least five days' notice to such railroad of such charge and complaint, and call upon such road to answer the same at a time and place to be specified by the Commission. (2) It shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. (3) If the Commission finds that there has been a violation, it shall determine if the same was wilful. (4) If it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State. (5) If said railroad shall not pay said damage and cost within the time specified by said Commission or if the Commission finds such violation was wilful, it shall institute proceedings to recover the penalty for such violation and the cost of the investigation.

[Acts 1925, S.B. 84.]

**Art. 6462. Complaints, How Framed**

All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witnesses, may be used by either party, the State, complainant, or by the railroad company, in any proceeding against such railroad involving the same subject matter.

[Acts 1925, S.B. 84.]

**Art. 6463. Testimony Taken**

The Commissioners may require the testimony taken before them to be reduced to writing when they deem necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. No provisions of this and the three preceding articles shall abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this title, or any other law of the State.

[Acts 1925, S.B. 84.]

**Art. 6464. May Inspect Books, etc.**

The Commissioners or either of them, or such persons as they may authorize in writing under the hand and seal of the Commission, shall have the right at any time to inspect the books and papers of any railroad company and to examine under oath any officer, agent or

employé of such railroad in relation to the business and affairs of the same.

[Acts 1925, S.B. 84.]

**Art. 6465. Penalty**

If any railroad shall refuse to permit such examination of its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five nor more than five hundred dollars for each day it shall so fail or refuse.

[Acts 1925, S.B. 84.]

**Art. 6466. Shall Ascertain Cost of Railway, etc.**

The Commission shall ascertain as nearly as practicable:

1. The amount of money expended in construction and equipment per mile of every railway in Texas;

2. The amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and equipment, and to replace all the physical properties belonging to the railroad.

3. The outstanding bonds, debentures and indebtedness, and the amount respectively thereof; when issued, and the rate of interest; when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor.

4. Disposition of the proceeds, by whom the indebtedness is held, and the amount purporting to be due thereon.

5. The floating indebtedness of the company, to whom due and his address, and the credits due on it.

6. The property on hand belonging to the railroad company.

7. The judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

8. The amounts paid for salaries to the officers of the railroad and the wages paid its employés.

For the purposes in this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use. Said information shall be printed from time to time in the annual report of the Commission.

[Acts 1925, S.B. 84.]

**Art. 6467. Blanks for Information**

The Commission shall as often as necessary furnish each railroad company suitable blanks with questions formed so as to elicit all information concerning such railroads. Any railroad company receiving such blanks shall

cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and if they are unable to answer any question therein propounded, they shall give satisfactory reason for their failure; and the answers duly sworn to by the proper officer of the company, shall be returned to the Commission within thirty days from the receipt thereof.

[Acts 1925, S.B. 84.]

#### Art. 6468. Refusal to Answer

If any officer or employé of a railroad shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or shall give a false answer to any such questions where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, a penalty of five hundred dollars shall be recovered from the company by the State when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of book-keeping to be observed by each railroad subject hereto, under the penalties prescribed in this article.

[Acts 1925, S.B. 84.]

#### Art. 6469. Annual Reports

The Commission shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as it may deem necessary, which report shall be published as the reports of heads of departments.

[Acts 1925, S.B. 84.]

#### Art. 6470. Through Freights

The Commission shall investigate all through freight rates on railroads in Texas; and when same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads shall be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed and the proper corrections are not made according to the request of the Commission, it shall notify the Interstate Commerce Commission and apply to it for relief.

[Acts 1925, S.B. 84.]

#### Art. 6471. Witnesses

In any examination or investigation provided in this chapter, the Commission is authorized and empowered to compel the attendance of witnesses, and may issue subpoenas for witnesses by such rules as they may prescribe, and such process shall be served by the officer to whom it may be directed. Each witness who

shall appear before the Commission by order of the Commission, at a place outside the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practical route, in going to and returning from the place of meeting of the Commission, which shall be paid by the Comptroller upon the presentation of proper vouchers, sworn to by the witness, and approved by the Commission. No witness shall be entitled to fees or mileage who is directly or indirectly interested in a railroad, or who is in anywise interested in any stock, bond, mortgage, security or earnings of such road, or was an officer, agent or employé of such road when summoned at the instance of such railroad. No witness furnished with free transportation shall receive pay for the distance he may travel on such free transportation. The Commission may issue an attachment as in civil cases, for a witness who fails or refuses to obey a subpoena, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission may fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony might tend to criminate the person giving it shall not excuse a witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

[Acts 1925, S.B. 84.]

#### Art. 6472. Depositions

The Commission may in its discretion issue proper process and take written or oral depositions instead of compelling personal attendance of witnesses. The fees of an officer executing any process issued under the provisions of this title shall be such as the Commission may allow, not to exceed fees as prescribed by law for similar services.

[Acts 1925, S.B. 84.]

#### Art. 6472a. Depositions in Matters Pending Before Commission

In all matters pending for hearing before the Railroad Commission of Texas, or any division thereof, the Commission, or any interested party, shall have the right to produce the testimony of any witness, or witnesses, by either written or oral depositions instead of compelling the personal attendance of witnesses. For this purpose the Commission is hereby empowered and authorized to issue commissions and all other process necessary for the purpose of taking such depositions. All depositions taken under the provisions of this Act shall be taken, insofar as applicable and to the fullest extent possible, in accordance with provisions of the Texas Rules of Civil Procedure, as amended, re-

lating to written and oral depositions in civil cases.

[Acts 1930, 41st Leg., 5th C.S., Leg., p. 183, ch. 43, § 1, eff. March 20, 1930; Acts 1971, 62nd Leg., p. 2541, ch. 835, § 1, eff. June 9, 1971.]

**Art. 6472b. Repealed by Acts 1971, 62nd Leg., p. 2541, ch. 835, § 2, eff. June 9, 1971**

**Art. 6473. Extortion**

If any railroad company, subject to the provisions of this title, or its agent or officer, shall charge, collect, demand, or receive a greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred nor more than five thousand dollars.

[Acts 1925, S.B. 84.]

**Art. 6474. "Unjust Discrimination"**

Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. If any railroad company shall fail or refuse, under regulations prescribed by the Commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as the Commission may prescribe, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad; provided perishable freights of all kinds and live stock shall have precedence of shipment.

3. If any railroad company shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter line than for a longer distance over

the same line; provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall, from time to time, prescribe the extent to which such designated railroad may be relieved from the operation of this provision. No injustice shall be imposed upon any citizen at intermediate points. Nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. **Penalty.**—Any railroad company guilty of unjust discrimination as hereinbefore defined shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. **Exceptions.**—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation under such circumstances and to such persons as the law of this State may permit or allow.

[Acts 1925, S.B. 84.]

**Art. 6475. Damages**

If any railroad subject to this title shall do, cause or permit to be done any matter, act or thing prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 778, ch. 430, § 1.]

**Art. 6476. Penalty Not Otherwise Provided**

If any railway company doing business in this State shall violate any provision of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided by law or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Commission, for every such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars.

[Acts 1925, S.B. 84.]

**Art. 6477. Suits for Penalty**

All of the penalties herein provided, except as provided in Article 6475, recoverable by the State shall be recovered and suits thereon shall be brought by the Attorney General or under his direction in the name of the State of Texas, in Travis County, or in any county into or through which such railroad may run; and the attorney bringing such suit shall receive a fee to be paid by the State of fifty dollars for

each penalty recovered and collected by him, and ten per cent of the amount collected. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury; provided suits brought under Title 66 for recovery of penalties, may be brought in any county:

1. Where an act violative of any provision thereof is committed.

2. Where such company or receiver has an agent or representative.

3. Where the principal office of such company is situated, or such receiver or receivers, or either, reside. One-half of all moneys collected under the provisions of said title, less the commission and expenses allowed by law, shall be paid into the State Treasury; the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county.

[Acts 1925, S.B. 84.]

#### Art. 6478. Evidence

Upon application of any person, the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders, and such certified copies, or printed copies published by authority of the Commission shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be an issue in the trial, is the official act of the Commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the Commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act.

[Acts 1925, S.B. 84.]

#### Art. 6478a. Reception in Evidence of Schedules, Classifications and Tariffs of Rates, Fares and Charges

Printed copies of schedules, classifications and tariffs of rates, fares and charges, and supplements thereto, filed with the Interstate Commerce Commission or the Railroad Commission of Texas, which show respectively an Interstate Commerce Commission number, which may be stated in abbreviated form as I. C. C. No. \_\_\_\_\_, and an effective date, or which show respectively a Railroad Commission of Texas number, which may be stated in abbreviated form as R. C. T. No. \_\_\_\_\_, and an effective date, may be received in evidence without certification and shall be presumed to be correct copies of the original schedules, classifications, tariffs and supplements on file

with the Interstate Commerce Commission or on file with the Railroad Commission of Texas. [Acts 1959, 56th Leg., p. 218, ch. 127, § 1.]

#### Art. 6479. Power of Commission to Relax Requirement as to Number of Passenger Trains; Hearing; Stopping at County Seats; Electric and Motor Cars

The terms "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns, but shall apply to the transportation of passengers and freight by electric or gasoline motor cars over steam railroads subject to this Act.

2. It shall be the duty of the Commission to see that upon each railroad in this State carrying passengers for hire there shall be run at least one train each day, Sundays excepted, upon which passengers shall be hauled; provided, however, the Commission may, in its discretion, upon application filed and after notice and hearing, relax such requirement as to any railroad, or part, portion or branch thereof, when, in its opinion, public convenience permits of such relaxation, and shall relax such requirement when it appears upon such hearing that the running of one train each day, Sundays excepted, is not necessary in the rendition of adequate service to the public, or that on any railroad, or part, or portion or branch thereof, passenger service as frequent as one train each day, Sundays excepted, with the passenger traffic offered and reasonably to be expected, does not and will not pay the cost of such service plus a reasonable return upon the property employed in the rendition of such service; and Commission shall further regulate passenger train service so as to require the stoppage of such trains, for a time sufficient to receive and let off passengers, at such stations as may be designated by the Commission; and it may further prescribe the number of trains so operated each day which shall be required to stop at County seat stations; and if such railroad, or branch of same shall operate a gasoline or electric motor car over its line, carrying passengers for hire in this

State, such motor car shall be deemed a train within the meaning of this Article and shall be subject to and included within the provisions hereof.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 283, ch. 198; Acts 1933, 43rd Leg., p. 281, ch. 111.]

**Art. 6479a. Frequency of Freight Train Service; Powers of Commission; Hearing; Certificate; Furnishing Cars**

Every railroad company, receiver, trustee, lessee, agent or other person, company or association operating any line of railroad in this State shall be and hereby is required to furnish freight train service at intervals sufficiently frequent to meet the reasonable necessities of the freight traffic offered for transportation over such line of railroad. If the Railroad Commission of Texas, on application and after notice and hearing shall find that on any line of railroad in this State, or part, portion or branch thereof, the convenience of the public does not require the furnishing of freight train service at more frequent intervals than a specified number of trains each week, it shall certify such finding to said applicant, and until such certificate, after notice and hearing, shall have been modified or revoked, it shall be conclusively presumed that freight train service of the frequency specified in such certificate over the railroad, or part, portion or branch thereof, described in such certificate is fully adequate to discharge the public duty of the person, firm or corporation operating such railroad, and such person, firm or corporation shall not be subject to any penalties or liabilities whatsoever for failing to operate or furnish freight train service in excess of that specified in that certificate. The time within which cars may be required to be furnished for loading under any of the laws of this State shall, on the railroad, or part, or portion or branch thereof, specified in any such certificate, be extended and enlarged, in case any such certificate, be made, by multiplying the maximum number of days otherwise allowed by a fraction whose numerator shall be seven and whose denominator shall be the number of trains in any one direction which may be specified in such certificate as the maximum required in any one week.

[Acts 1933, 43rd Leg., p. 280, ch. 110.]

**Art. 6480. Law Cumulative**

Any provision of this title which may be inconsistent or in conflict with Title 66 shall be void and inoperative, but to that extent only. The provisions of any foregoing article of this title shall not have the effect to release or waive any right of action by the State, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this title shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

[Acts 1925, S.B. 84.]

**Art. 6481. Railroad to Furnish Cars**

When any person, firm or corporation, desiring to ship any freight of any kind shall make written application to any superintendent, agent, or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railroad company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person. If the application be for twelve cars or less, the same shall be furnished in three days; and provided further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired. The place designated shall be at some station or switch on the railroad.

[Acts 1925, S.B. 84.]

**Art. 6482. Penalty**

A railway company failing to furnish cars applied for under the provisions of this chapter shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, and all actual damages that such applicant may sustain.

[Acts 1925, S.B. 84.]

**Art. 6483. Deposit**

Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars, and shall load said cars within forty-eight hours after they have been duly delivered; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. Where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; Sundays shall not be included in computing the time. The penalty prescribed shall not accrue to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. If the said applicant shall not use such cars so ordered by him, and shall notify said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the failure to use said cars.

[Acts 1925, S.B. 84.]

**Art. 6484. To Deliver Loaded Cars**

When cars have been supplied and loaded, the railway company shall deliver them to the consignee within a reasonable time; and the consignee shall unload the same within forty-eight hours after delivery and notice, Sundays excepted, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not so unloaded.

[Acts 1925, S.B. 84.]

**Art. 6485. Proof Necessary**

Parties bringing suit against a railroad company under the provisions of this law shall show that such cars if furnished, would have been loaded within the time specified by this law. The provisions of this law shall not apply in cases of strikes or public calamity.

[Acts 1925, S.B. 84.]

**Art. 6486. Not to Affect Demurrage Regulations**

The provisions of this law shall not forfeit or annul the demurrage regulations provided by the Commission, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said Commission.

[Acts 1925, S.B. 84.]

**Art. 6487. Duty to Furnish Cars**

Each railroad company incorporated under the laws of this State and doing business in this State, under the limitations and regulations prescribed by the Commission, shall equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay.

[Acts 1925, S.B. 84.]

**Art. 6488. Commission to Require Mortgage**

The Commission shall require each railroad corporation chartered under the laws of this State, holding itself out as a common carrier, to provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic, expeditiously and without delay, and it is vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier, and facilitate the movement of all traffic, passenger and freight, and that will supply transportation accommodations which it offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Commission is authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment of the Commission any railroad company in this State which now has an excessive issue of bonds and

stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, the Commission after not less than five days' notice and hearing shall issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Commission is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment.

[Acts 1925, S.B. 84.]

**Art. 6489. Penalty**

Any railroad company or common carrier failing to comply with any provision of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of any provision thereof, shall be deemed guilty of an abuse of their rights and privileges, and, shall be subject to a penalty of one hundred dollars payable to the State of Texas. Each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense.

[Acts 1925, S.B. 84.]

**Art. 6490. Facilities, Interchange Cars, etc.**

Every railroad company operating a line of railroad within this State shall provide sufficient tracks, switches, sidings, yards, depots, motive power, cars and all other needful facilities and appliances, for receiving and delivering freight, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered to it for shipment within a reasonable time after demand therefor made by a shipper; and supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars within which to load the same; and as to all services to be performed within the limits of the State, as to such freight and cars shall transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to

the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State shall receive and transport within a reasonable time such loaded car or cars tendered to it, if in suitable condition for movement, and deliver the same at destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad. Where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where by reason of any accident or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases, where suitable cars may be supplied, and when the freight is carried wholly within this State, the Commission shall make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Whenever by reason of any accidental or unavoidable cause which cannot be provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this article shall in anyway affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, or refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any provision of the statutes of this State, or other duties imposed by law.

[Acts 1925, S.B. 84.]

#### Art. 6491. To Interchange Cars at Junction Points

To facilitate the movement, preservation and exchange of freight, every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, shall exchange at such connecting or junction points, the loaded and empty cars

used in or for transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and a railroad company forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State shall furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, every such railroad company so receiving the cars of another shall return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand thereof; and as to cars exchanged in transporting freight wholly within this State within the time and according to the rules and regulations prescribed by the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6492. Commission to Make Rules

As to all freight carried wholly within this State and the cars used therefor, the Commission shall make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage; the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for

the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. Every such railway company shall conform to each rule, regulation and order of the Commission made in accordance with the two preceding and three succeeding articles; and failure to observe the rules and regulations of the Commission, or to comply with the provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the Commission, and shall subject such railroad company to the penalties hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 6493. Liable for Damages, When

Every railroad company which shall fail to furnish cars as provided herein for the shipment of freight within a reasonable time, or in case of the shipment of freight between points within this State, within the time prescribed by the Commission, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury or damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage. If any railroad company in this State shall fail or refuse to furnish within a reasonable time after demand therefor, any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case of suit to recover the same. Any railroad company which shall fail to furnish or exchange cars as required by the provisions of this law, or by the rules and regulations of the Commission as provided for herein, shall be liable to the railroad company injured thereby for all such damages as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of any damage. Every railroad company using cars of another railroad compa-

ny, or which have been delivered to it by such railroad company, shall be liable to pay to the party entitled thereto the value of the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this State, the amount for the use or hire thereof may be prescribed by the Commission, unless the owners of such cars and such railroad companies agree upon such compensation. Where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the Commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the Commission or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof by suit.

[Acts 1925, S.B. 84.]

#### Art. 6494. Not to Furnish Cars, When

No railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight.

[Acts 1925, S.B. 84.]

#### Art. 6495. Other Penalty

A railroad company which shall willfully, by its gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission, as to freight carried between points wholly within this State, or if not so prescribed, then within a reasonable time, shall in addition to the other liabilities herein provided for, forfeit to the State of Texas, for each of such violations, not less than one nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such willful or gross negligence, shall fail or refuse to furnish or exchange shall be a separate offense.

[Acts 1925, S.B. 84.]

#### Art. 6496. "Shipper"

By the term "shipper" as herein used, is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of consignor or consignee.

[Acts 1925, S.B. 84.]

**Art. 6497. "Reasonable Time"**

It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more. The railroad companies shall furnish their station agents with printed blanks upon which shippers make application for their cars. Nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the Commission.

[Acts 1925, S.B. 84.]

**Art. 6498. Suitable Depots**

Each railroad company in this State shall provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public. They shall keep and maintain apartments in such depot buildings for the use of passengers, and keep and maintain adequate and suitable freight depots and buildings for receiving, handling, storing and delivering of all freight handled by such roads, and the Commission shall require railroad companies to comply fully with the provisions of this law under such regulations as said Commission may deem reasonable.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 363, ch. 133, § 1, eff. Sept. 1, 1969.]

**Art. 6499. Union Depots**

Where two or more railroad companies reach the same city or town in this State, if the Commission shall deem it practicable for such railroad companies to use a joint or union passenger depot or to join in the construction and use of a passenger depot, then it shall give notice to such railroad companies and after investigation and public hearing, may require the construction and maintenance of such union passenger depot by such railroad companies, if it appears to the Commission that the construction and maintenance of such union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The Commission may specify the requirements of such union depot as to kind and character and may apportion the cost of construction and maintaining the same to each

railroad company where the companies cannot agree.

[Acts 1925, S.B. 84.]

**Art. 6500. Penalty for Failure**

Failure upon the part of any railroad company to observe and obey the orders of the Railroad Commission, issued in compliance with the two preceding articles shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, order, judgments and decrees made by the Commission.

[Acts 1925, S.B. 84.]

**Art. 6501. Right to Lease Another Road**

A railroad whose total mileage in this State does not exceed thirty miles in length, which connects at or near the State line with any other railroad, may be leased by the company owning such other railroad, subject to the following provisions:

1. Such lease shall be made on such terms and for such time, not exceeding ten years, as may be approved by the Commission. At any time before or after its expiration the lease may be renewed or another executed subject to the provisions and limitations of this title.

2. During the term of such lease the lessor company shall remain subject to the jurisdiction of the Commission, and shall be liable for any and all things occurring on or in connection with such road. The lease shall not operate to exempt or release either the lessor or lessee company from any liability that would otherwise exist against it.

3. The lessee company shall be exempted from the laws of this State requiring general offices to be maintained and general officers to reside in this State, except as required by provisions of the Constitution of this State and by the orders of the Commission.

4. In a suit against the lessor company the officers and agents of the lessee company shall be the officers and agents of the lessor company for the purpose of serving process.

The provisions of this article shall not apply to any railroad whose total mileage in this State may exceed thirty miles in length, although the part of its line connecting at or near the State line does not exceed thirty miles in length.

[Acts 1925, S.B. 84.]

**Art. 6502. Railroad Crossings**

Any company, corporation or receiver or person operating any railroad in this State shall forfeit and pay to the State of Texas a penal sum of five hundred dollars per week for each week of refusal or neglect to comply with any order made by the Commission in pursuance of the following provisions of this article:

1. When necessary for the track of one railroad company to cross the track of another, the Commission shall ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road to be crossed; and, if the Commission decides that it is reasonably practicable to avoid a grade crossing, said Commission shall by its order prevent the same.

2. Where the tracks of two or more railways cross each other at a common grade in this State, such railroad companies shall protect such crossing by interlocking or other safety devices and regulations to be designated by the Commission, to prevent trains colliding at such crossings.

3. When a railway company seeks to cross, at grades with its track or tracks, the track or tracks of another railroad, the one seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the Commission, and to pay all cost of appliances together with the expense of putting them in. This law shall not apply to crossings of side tracks.

4. When interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the Commission, the engines and trains of such railroads may pass over such crossings, without stopping.

[Acts 1925, S.B. 84.]

#### Art. 6503. Double-Header Trains

Where an unreasonable degree of hazards results to its employés, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this State to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; the Railroad Commission shall investigate such abuses and see that the same are corrected, regulated or prohibited as hereinafter provided:

[Acts 1925, S.B. 84.]

#### Art. 6504. Use Regulated by Commission

Should the Commission decide to regulate or forbid the practice of using more than one working locomotive at the same time in the operation of any train on any railroad, or part of railroad, within this State, then it shall make and record an order fully setting forth its decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated and how regulated. Notice of such order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be di-

rected to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to any general officer of said railroad in this State residing in said county. Said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6505. Penalty

Any railroad corporation which shall at any time after ten days after service of such notice violate the order of the Commission, shall be liable to the State for a penalty of not less than five hundred nor more than five thousand dollars for each offense.

[Acts 1925, S.B. 84.]

#### Art. 6506. Maintenance; Powers of Commission

The Commission shall see that each railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch. The Commission is vested with full power to require any railroad company to purchase or secure for installation in its roadbed or track all ties, rails, ballast and other material and equipment as may, in the judgment of the Commission, be necessary for the proper maintenance of the whole or any designated portion of such track and roadbed so as to put the same in safe condition and enable such railroad to adequately perform its duties to the public and to transport freight and passengers with safety and dispatch.

[Acts 1925, S.B. 84.]

#### Art. 6507. Penalty for Failure to Comply

When the Commission has made such order as authorized by the preceding article, each railroad company subject thereto shall promptly comply with the terms thereof, and for failure or refusal to do so, such company or its receiver shall become liable to the State of Texas, for a penalty of not less than five hundred nor more than five thousand dollars for each offense. In addition to such penalties, any court of competent jurisdiction upon application of the Attorney General shall issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders.

[Acts 1925, S.B. 84.]

#### Art. 6508. Improvement Bonds

When the Commission shall make an order as authorized by the provisions hereof for the improvement of any line of railway, it may in its discretion at the same time make an order permitting said railroad corporation to issue bond sufficient to raise the money necessary to

make such improvements; and authorize such railroad corporation to secure the same by proper mortgage upon its property, and designate such bonds and mortgages as "Improvement Bonds and Mortgages;" provided, the entire amount of bonds of said railroad company shall not exceed the assets of the said company. The Commission shall also see that the funds arising from the sale of such bonds are applied to the making of the improvements ordered by it to be made, and shall regulate the same in the proper manner and any sale of such "Improvement Bonds and Mortgages" at less than par value thereof, must in order to be valid, be approved by the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6509. Sidings, etc.

All railroads in Texas shall build sidings and spur tracks sufficient to handle the business tendered such railroads, when so ordered by the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6510. To Enforce Compliance

Power is conferred on the Railroad Commission to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said Commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the Commission as provided herein.

[Acts 1925, S.B. 84.]

#### Art. 6511. Switch Connections

Any railroad company or receiver upon application of a shipper tendering traffic for transportation sufficient to justify it, shall construct, maintain and operate upon reasonable terms, a switch connection with any private sidetrack or spur track constructed by such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability and without discrimination in favor of or against such shipper.

[Acts 1925, S.B. 84.]

#### Art. 6512. Application

If any railroad company or its receiver shall fail to install and operate any such switch connection, on application therefor by any shipper, such shipper may make application to the Commission, and it shall enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection, if reasonably practicable and safe and will furnish sufficient business to justify the construction and maintenance of the same.

[Acts 1925, S.B. 84.]

5 West's Tex. Stats. & Codes—37

#### Art. 6513. To Fix Rates, Prevent Discrimination, etc.

The Commission shall fix just and reasonable rates to be charged by railroad companies or their receivers for traffic moved and handled over private sidetracks or spur tracks extending to private industries, and it shall adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Commission shall have authority to compel the operation without charge of any private sidetrack or spurtrack similarly situated.

[Acts 1925, S.B. 84.]

#### Art. 6514. To Regulate Private Sidetracks, etc.

The Commission shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private side tracks or spur tracks similarly situated, to prevent discrimination therein.

[Acts 1925, S.B. 84.]

#### Art. 6515. No Discrimination

Whenever any railroad company shall construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Commission shall order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated on the same terms and conditions.

[Acts 1925, S.B. 84.]

#### Art. 6516. Failure to Comply

Should any railroad company or receiver thereof fail to obey the orders of the Commission issued in compliance with the five preceding articles, such failure shall subject such railroad company to a penalty of not less than five hundred nor more than five thousand dollars for each offense.

[Acts 1925, S.B. 84.]

#### Art. 6517. Action for Damages

Any person injured by a violation of the terms of the six preceding articles shall have the right to bring suit for his actual damages and for the enforcement of his rights thereunder.

[Acts 1925, S.B. 84.]

**Art. 6518. Re-arrangement**

The Commission shall investigate proposed or existing arrangement of railroad tracks, switches and depot buildings at railroad stations to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings are or may be dangerous to the public and to determine whether or not the public interest demands a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such re-arrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Commission may if the question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to arrange, or re-arrange, or re-locate the same in accordance with the specifications made by the Commission. No such arrangement, re-arrangement, or relocation, shall be authorized or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town.

[Acts 1925, S.B. 84.]

**Art. 6519. Suits for Penalties**

All penalties and forfeitures provided for by this chapter for a violation of any provision hereof by railway companies recoverable by and payable to the State or any municipal subdivision thereof shall be determined by a direct suit in a proper court instituted by or under the direction of the Attorney General in Travis County or in any county into or through which the line of the offending railway company may run. The attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected to be paid by the State; and the fees so allowed shall be over and above the fees allowed such attorney under the provisions of law. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury.

[Acts 1925, S.B. 84.]

**Art. 6519a. Member of Commission or Designated Employé Authorized to Hold Hearings, Powers, etc.**

Any member of the Railroad Commission of Texas (or any authorized employee thereof) designated by the Commission for that purpose, shall have power in all cases coming before the Commission to hold hearings and conduct investigations and to make a record thereof for the use and benefit of the Commission, the same as if the entire Commission were present,

and such commissioner or designated employee is hereby given the authority to administer oaths, certify to all official acts, and compel the attendance of witnesses and the production of papers, waybills, books, accounts and all other pertinent documents and testimony, and said record when so made and properly certified to by such commissioner or employee, shall have the same force and effect as if made before the Commission, and cases in which such records are made shall be determined by the Commission as if the record had been made before the Commission itself.

Any person who shall in any way, refuse to comply with any provision of this Act or any person who shall in any way undertake to obstruct or interfere with any proceeding under this Act, shall be subject to punishment for contempt by the Commission.

This Act shall be cumulative of all other laws conferring jurisdiction and authority upon the Railroad Commission.

[Acts 1929, 41st Leg., p. 539, ch. 262, § 1.]

**Art. 6519b. Operating Fund****Creation of Fund; Transfer of Moneys**

Sec. 1. All moneys now on deposit in the State Treasury to the credit of the Motor Carrier Fund, the Oil and Gas Enforcement Fund, the Gas Utilities Fund, and the Liquefied Petroleum Gas Fund, together with all moneys due and owing to any and all of said Funds, shall be transferred, deposited, and consolidated into a single fund, in the State Treasury, to be known as the Railroad Commission Operating Fund but separate revenue accounts shall be provided for each of the sources enumerated in this Section. From the effective date of this Act each of the enumerated funds is abolished, and its balances are to be transferred and credited to the Railroad Commission Operating Fund.

**Deposits; Revenue Accounts**

Sec. 2. All moneys collected or received by the Railroad Commission after the effective date of this Act, from any source from which moneys are required to be deposited in the State Treasury to the credit of any of the Funds named in Section 1 of this Act, shall be deposited in the State Treasury to the credit of the Railroad Commission Operating Fund and to the credit of the respective revenue account within this Fund.

**Uses**

Sec. 3. The Railroad Commission Operating Fund shall be used for the aggregate purposes for which the several funds enumerated in Section 1 and abolished by this Act have heretofore been used.

**Cost Records; Unused Moneys**

Sec. 4. The Railroad Commission shall keep such cost records as will permit the proper allocation and use of these moneys. All unused amounts not reappropriated to the Railroad

Commission for use in a succeeding fiscal period, from these sources, shall be deposited to the credit of the General Revenue Fund at the end of each fiscal period.

**Moneys From Sale of Property**

Sec. 5. All moneys derived from the sale of property purchased out of any of the Funds referred to in Section 1 of this Act, and out of the Railroad Commission Operating Fund, after cost of advertising for sale has been deducted, shall be deposited in the State Treasury to the credit of the Railroad Commission Operating Fund.

**Expenditures**

Sec. 6. All expenditures made by the Railroad Commission out of the Railroad Commission Operating Fund shall be made in accordance with the procedures regularly prescribed for expenditures from the State Treasury.

**Conflicting Laws; Purposes of Abolished Funds**

Sec. 7. All laws or parts of laws in conflict with this Act are hereby repealed only to the extent that they require the creation of separate funds. It is expressly provided that all of the purposes for which the several funds enumerated in Section 1 shall be used, shall remain in effect and be applied in the aggregate to the Railroad Commission Operating Fund.

**Effective Date**

Sec. 8. This Act shall be effective on and after September 1, 1963.

[Acts 1963, 58th Leg., p. 495, ch. 180.]

**CHAPTER TWELVE. ISSUANCE OF STOCKS AND BONDS**

**Article**

- 6520. Regulating Stocks, Bonds, etc.
- 6521. Incumbrance Above Value of Road.
- 6522. To Ascertain Values, etc.
- 6523. Effect of Sale of Road.
- 6524. Purchasers May Issue Bonds, etc.
- 6525. Authority to Issue Bonds.
- 6526. Certificates of Stock.
- 6527. Prerequisites.
- 6528. Registering Bonds.
- 6529. Forfeiture of Charter.
- 6530. Certificates, Bonds, etc., Void.
- 6531. False Statement.
- 6532. State Not Liable.
- 6533. Construction of Branch Lines.
- 6534. May Issue for Double Tracks.

**Art. 6520. Regulating Stocks, Bonds, etc.**

Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stocks and shares thereof, and the executions of liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regulation, restriction and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws.

[Acts 1925, S.B. 84.]

**Art. 6521. Incumbrance Above Value of Road**

No bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by any lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Commission that public interests or the preservation of the property demand it, the Commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property.

[Acts 1925, S.B. 84.]

**Art. 6522. To Ascertain Values, etc.**

The Commission shall ascertain, and in writing report to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it has any objections thereto it must file them in writing within forty days after said service, or the same will be so deposited with the Secretary of State as correct. If the company files with said Commission any objections to said report, the Commission shall duly investigate and pass on same, and if it concludes that its report of value is too low or too high, then it shall make the necessary correction before filing it. If no objections are filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in this title. To promote public interests and protect private rights, the Commission, after due notice under the rule herein prescribed, may correct its report of the value of any railroad at any time it may deem proper.

[Acts 1925, S.B. 84.]

**Art. 6523. Effect of Sale of Road**

Every judicial or other sale of any railroad in this State which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to

satisfy which such sale is made be continued or held as a claim or lien on said property.

[Acts 1925, S.B. 84.]

#### Art. 6524. Purchasers May Issue Bonds, etc.

The purchaser of said property who procures it clear of incumbrance, or any company organized by his consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that he may deem advisable, subject to the rules and limitations prescribed by law.

[Acts 1925, S.B. 84.]

#### Art. 6525. Authority to Issue Bonds

Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Commission thereto. In said application, it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in the process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchise and property proposed as security for said contemplated debts. If on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and a lien to the extent necessary for the demands of the work, at no time to be fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Article 6526, and have them registered as required in Article 6527.

[Acts 1925, S.B. 84.]

#### Art. 6526. Certificates of Stock

Each railroad company now existing, or which shall hereafter be organized, or which shall be re-organized under the laws of this State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in this State, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the

meeting at which the issuing of such certificates of stock is authorized, shall make a certificate signed by him in person to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Commission, and by it filed and preserved in its office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall increase its stock unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6527. Prerequisites

When any railroad company in this State desires to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. Said bonds, when thus prepared, shall be presented to the Commission, with a written statement, signed and sworn to by the president of said company, showing the amount of the stock of said company and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates, and amounts thereof.

Said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval. This provision shall not apply to receiver's certificates where the amount does not exceed one hundred thousand dollars.

[Acts 1925, S.B. 84.]

#### Art. 6528. Registering Bonds

When such bonds shall be presented to the Secretary of State with said direction to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." Provided, however, that at the direction of the Secretary of State his said seal may be a facsimile seal in lieu of his manually impressed seal and his said signature may be his facsimile signature in lieu of his manual signature. No bond or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 582, ch. 225, § 1.]

#### Art. 6529. Forfeiture of Charter

If any railroad company owning or operating a railroad in this State shall issue or consent or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of its charter.

[Acts 1925, S.B. 84.]

#### Art. 6530. Certificates, Bonds, etc., Void

Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without first complying with the provisions of this chapter shall be void.

[Acts 1925, S.B. 84.]

#### Art. 6531. False Statement

Each railroad director, president, secretary or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Commission

direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with the knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct.

[Acts 1925, S.B. 84.]

#### Art. 6532. State Not Liable

Nothing in this law, and no act done or performed under or in connection with it shall be construed to make the State of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt or claim executed or assumed under or by virtue of its provisions.

[Acts 1925, S.B. 84.]

#### Art. 6533. Construction of Branch Lines

Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in the manner provided in this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter. The Commission is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and in determining the right to issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by a lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other provision of this chapter or of the existing laws of this State except in so far as the same may be changed by the provisions of this article.

[Acts 1925, S.B. 84.]

#### Art. 6534. May Issue for Double Tracks

Any railroad company chartered under the laws of this State, whenever the Commission

shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turn-outs, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the Commission may authorize the execution and issuance of such stock and bonds, or bonds. In determining the right to issue such stock and bonds, or bonds, the Commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed.

[Acts 1925, S.B. 84.]

### CHAPTER THIRTEEN: MISCELLANEOUS RAILROADS

#### Article

- 6535. Eminent Domain.
- 6536. Right of Way.
- 6537. Streams, Streets, etc.
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- 6539. Proceedings to Condemn.
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- 6549. Terminal Railways.
- 6550. Road to Mines, etc.
- 6550a. Repealed.
- 6550(a). Texas State Railroad.
- 6550a1. Aerial or Tramways to Mines.
- 6550b. Repealed.

#### Art. 6535. Eminent Domain

All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in this State for the transportation of freight or passengers, or both, shall have the right of eminent domain with all the rights and powers as fully as are conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants.

[Acts 1925, S.B. 84.]

#### Art. 6536. Right of Way

Such corporation shall have the right and power to lay out rights of way for their rail-

ways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. Such corporation may have such examination and survey of their proposed railways made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby.

[Acts 1925, S.B. 84.]

#### Art. 6537. Streams, Streets, etc.

They may construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal. Such bridge or other structure shall be so erected as to not unnecessarily or unreasonably prevent the navigation of such stream, water course, bay, arm of the sea or navigable water and nothing herein shall authorize the construction of any such railway upon or across any street, alley, square or property of any incorporated city or town without the assent of said corporation of said city or town, and before constructing an electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same.

[Acts 1925, S.B. 84.]

#### Art. 6538. Rights Over Other Electric Railway Tracks, etc.

The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this State for the purpose hereinafter mentioned, subject to the consent, authority and control of the governing body of such town or city.

[Acts 1925, S.B. 84.]

#### Art. 6539. Proceedings to Condemn

Any interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an

easement along and upon the track or tracks of any electric street railway company for the purpose only of securing an entrance into and an outlet from a town or city upon a route to be designated by the governing body of the city or town. In any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case shall define and fix the terms and conditions upon which such easement or right of way shall be used. The court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof, and no application for a rehearing shall be made until two years after the final judgment on the last preceding application.

[Acts 1925, S.B. 84.]

#### Art. 6540. "Interurban Railway Company"

An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this State for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns or between one city and one incorporated town in this State; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred in this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of the provisions of this article shall operate to forfeit such easements or rights of way.

[Acts 1925, S.B. 84.]

#### Art. 6541. To Sell Light and Power

Interurban electric railway companies shall also have the right to produce, supply and sell electric light and power to the public and to municipalities.

[Acts 1925, S.B. 84.]

#### Art. 6541a. Extension of Lines to Supply Light and Power

Any corporation now or hereafter organized under the laws of this state authorized to construct, acquire and operate electric or other lines of railway within and between any cities or towns in Texas and to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which such company operates, may extend its electric light, power and gas lines, or either of them, for the purpose of supplying light, power and gas, or either of them, to the public residing beyond the territory adjacent to the cities or towns within or through which it operates, and for the purpose of so extending any such electric light, power and gas lines, any such corporation shall have all the rights and powers of extension now or hereafter possessed and enjoyed by public service corporations engaged in supplying and selling electric light, power and gas, or either of them as provided by law; and the powers herein granted shall not repeal either expressly or impliedly any of the anti-trust laws of the State of Texas.

[Acts 1927, 40th Leg., p. 152, ch. 101, § 1.]

#### Art. 6541b. Street and Interurban Railways Abandoned Permitted to Continue Distribution of Gas and Electricity

That all private corporations which have heretofore been incorporated and are now authorized by their charters and the Statutes of this State to operate street and interurban railways with power to distribute and sell gas and/or electricity to the public and which have heretofore abandoned or discontinued or may hereafter abandon or discontinue the operation of street and interurban railways and motor buses substituted therefor are hereby authorized to continue to distribute and sell electricity and/or gas in accordance with their charters and the Statutes during the unexpired period of their corporate charters just as though they continued the operation of said street and interurban railways or motor buses, or both.

[Acts 1937, 45th Leg., p. 414, ch. 209, § 1.]

#### Art. 6542. Provisions Cumulative

No provision in this chapter shall be construed to have the effect to confer the power of eminent domain, or any power herein conferred, except that conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, or corporation or to add to the powers already possessed by any such railroad or railroad company, person, firm, association or corporation so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date. Nothing in this article shall be construed to take from any interurban railroad

company, person, firm, association or corporation, any power of eminent domain already possessed by it.

[Acts 1925, S.B. 84.]

#### Art. 6543. Merger

Any corporation organized under the laws of this State authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, may acquire, lease or purchase the physical properties, rights and franchise of any other railway corporation having and possessing like power, or may lease or purchase physical properties, rights and franchises of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and may sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the governing body of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. Any corporation authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the governing body of the city or town shall consent thereto; in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract. No corporation named in this article shall ever be permitted to acquire, own, control or operate any parallel or competing interurban line. No such corporation shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if the same will violate any provision of the law commonly known as the anti-trust law.

[Acts 1925, S.B. 84.]

#### Art. 6544. Street Railway Fares

All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half of the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such school is in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare.

[Acts 1925, S.B. 84.]

#### Art. 6545. Street and Suburban Railways

All street and suburban railways engaged in the transportation of freight within and near cities and towns, shall be subject to the control of the Railroad Commission. No street railway company shall be exempt from payment of assessments that may be legally levied or charged against it for street improvements. Any corporation heretofore or hereafter organized under the general laws of this State, and which owns or operates with electric power any street or suburban railway or belt line of railways within and near cities and towns for the transportation of freight and passengers within Texas shall be authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefore [therefor], and may, by proceeding in the manner provided by law, amend its articles of incorpo-

ration so as to expressly include such authority. When the Railroad Commission shall decide that any corporation created under chapter one of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town in addition to such mileage as it may have within the same, is not for any reason subject to the control of said Commission in reference to the issuance of stocks and bonds or either under the provisions of Chapter 50, Acts 1893, after such decision of the Commission, said corporation shall have the right to issue its stocks and bonds or either and also to increase its stocks and bonds or either without the control of the Commission and without complying with the Act aforesaid in reference thereto, and when so issued said stocks and bonds shall in all respects be valid and binding.

[Acts 1925, S.B. 84.]

#### Art. 6546. Freight Interurbans

All electric, gas or gasoline, denatured alcohol or naphtha interurban or motor railways incorporated as such, which shall engage in transporting freight, shall be subject to the control of the Railroad Commission. No such corporation shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Such interurban railways shall have the same right of eminent domain as are now given by law to steam railroads, and may exercise such right for the purpose of acquiring right of way upon which to construct their railway lines, and sites for depots and power plants, and shall have the same rights, powers and privileges as are now granted by law to interurban electric railways companies. Any such interurban company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. No property upon which is located a cemetery shall ever be condemned by any such interurban railway, unless it shall affirmatively be shown, and so found by the court trying such condemnation suit, that it is necessary to take such property, and no other route is possible or practicable.

[Acts 1925, S.B. 84.]

#### Art. 6547. Plants and Buildings

Any corporation heretofore organized under any law of this State, and which now or may hereafter operate a line of electric, gas or gasoline, denatured alcohol, or naphtha motor railway, within and between any cities or towns in Texas, is authorized to own and operate union depots and office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to cities or towns within or through which said company operates. Such existing corporation, or one heretofore organized under subdivision 68 of Article 1302, may, by proceeding in the manner provided by

law, amend its charter so as to expressly include any or all powers herein authorized.

[Acts 1925, S.B. 84.]

#### Art. 6548. Jitney Lines

Any corporation authorized to operate a street or suburban railway or interurban railway and to carry passengers for hire, is hereby authorized subject in every case to the approval and consent of the governing body of the city or town where said street, suburban or interurban railway company is operated to substitute for such railway automobile motor bus lines, in whole or in part, and to maintain and operate motor buses for the purpose of carrying passengers for hire on the public roads, streets, plazas, alleys, and highways within the corporate limits of any incorporated cities or towns, under such regulations as may be prescribed by any such cities or towns, and on the public roads and highways within five (5) miles of the corporate limits of any such incorporated cities or towns, under such regulations, in territory outside of city limits, as the Commissioners Court of the county may prescribe; and such substitution of motor buses for street cars and street or interurban railway and the discontinuance of such street or interurban railways shall not in any way impair any of the corporate powers of corporations heretofore incorporated as street or interurban railways with respect to the operation of other public utilities authorized by their charters and by statutes now in force.

Provided, however, companies taking advantage of this Act shall amend their charters and pay the fees provided by law for the filing of such amendments; and, provided that this Act shall not affect any case now pending in the courts; and, provided further that nothing herein contained shall be so construed as to impair the rights of any city under any franchise it may heretofore have granted to the corporation in question, or its predecessor.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 48, ch. 22.]

#### Art. 6548a. Certain Street and Interurban Railway Corporations Authorized to Amend Charters to Include Operation as Motor Carriers

##### Authority

Sec. 1. That private corporations heretofore incorporated for the purpose of operating street or interurban railways, which said private corporations have totally abandoned such operations prior to January 1, 1934, may amend their charters so as to include as a separate purpose of the corporation the acquiring, owning and operating of motor vehicles and motor buses for transportation of passengers for hire upon the public streets and public ways of cities and towns and upon the public ways of the adjacent unincorporated territory within five (5) miles from the limits of such cities and towns, provided however, this limit shall not be construed to prohibit any corporation conforming with this Act from contracting for char-

tered passenger service beyond said five (5) mile limit, under such reasonable regulations as may be legally imposed from time to time by such cities and towns within the limits thereof and the Commissioners' Courts of counties as now prescribed by Article 6548.

**Contiguous Cities or Towns**

Sec. 2. If the boundary of one city or town is contiguous with the boundary or boundaries of another city or town, or other cities or towns, the authority granted under Section 1, hereof to operate within five (5) miles thereof, shall be construed to include any territory within five (5) miles of the limits of any such contiguous city or town.

**Regulatory Authority of Railroad Commission  
Not Affected**

Sec. 3. Nothing in this Act shall be construed to deprive the Railroad Commission of Texas, of its exclusive authority to continue the regulation of buses and motor vehicles operating under its jurisdiction; nor shall this Act relieve such operators of the requirement to secure certificates or permits from the Railroad Commission authorizing such operations.

**Itemized Statement of Money and Property and Value of  
Property to be Filed**

Sec. 4. Provided before any such amendment may be filed with the Secretary of State the Officers and Directors of any corporation shall file an affidavit with the Secretary of State giving a detailed itemized statement of what money and property is held or owned by it and the actual cash market value of each such item of property.

[Acts 1937, 45th Leg., p. 675, ch. 337.]

**Art. 6549. Terminal Railways**

Terminal railways shall have all the rights and powers conferred by law upon railroads by Chapters 6 and 7 of this title, and when such railway is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities to accommodate and expeditiously handle the exchange of freight and passenger traffic with all steamship and other vessels and water craft using such waterways; and shall have the right to issue bonds in excess of its authorized capital stock under the direction of the Railroad Commission of Texas, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads. Said commission shall fix the values of the property, rights and franchises of such railway company; and its stocks and bonds shall not exceed the amount authorized by said Commission in which jurisdiction over the issuance of the bonds herein authorized is hereby vested. No such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be from time to time designated and established by said Commission,

which shall have authority to establish and prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charge or service. The provisions of Articles 6452, 6453 and 6454, shall apply to any and all orders, rulings, judgments and decrees of said Commission made, entered or held under the provisions of this law in respect to such terminal railway companies.

[Acts 1925, S.B. 84.]

**Art. 6550. Road to Mines, etc.**

Corporations created to build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, and mills, shall have the right to condemn land necessary for the right of way for such road from and between such mines, gin, quarry, manufacturing plant or mill and the nearest line of railroad, provided; that no such corporation shall have said right of eminent domain until it shall declare itself a public highway and common carrier, thus placing said road under the control of the Railroad Commission.

[Acts 1925, S.B. 84.]

**Art. 6550a. Repealed by Acts 1953, 53rd Leg.,  
p. 79, ch. 58, § 12, eff. April 8, 1953**

**Art. 6550(a). Texas State Railroad**

**Board of Managers**

Sec. 1. The Governor of the State of Texas is hereby authorized to appoint three (3) men who shall constitute the Board of Managers of the Texas State Railroad, which shall be an agency of the State of Texas. Said three (3) men shall first be appointed for terms of two (2), four (4) and six (6) years, respectively. Thereafter the Governor shall, except in appointments to fill unexpired terms, appoint each Board member for a term of six (6) years. All appointments to said Board shall be subject to confirmation by the Senate. The Governor shall designate one (1) member of said Board to act as Chairman for the first two (2) years, thereafter designating a different Board member as Chairman for the following two (2) years, it being the intention of the Legislature that the office of Chairman should be rotated consecutively among all members of said Board. The members of said Board shall serve without pay, provided, however, that they may be reimbursed, in the same manner as generally provided for other State agencies, for such actual and necessary travel expenses as may be incurred by them while in the performance of their duties as members of said Board of Managers and for which the Legislature shall appropriate funds.

**Delivery of Railroad and Property to Board; Authority  
of Board; Ratification of Acts of Prior Board**

Sec. 2. Immediately upon the taking effect of this Act it shall be the duty of the present Board of Managers to transfer and deliver pos-

session of said Railroad, together with all equipment, supplies, choses, books, records, and documents of every character, and all property of whatever kind belonging to the said Railroad, to the Board of Managers created by this Act and appointed by the Governor of the State of Texas. The said Board of Managers shall continue to exercise full and plenary control and management of the properties of the Texas State Railroad and all acts of prior Boards of Managers of the Texas State Railroad are hereby ratified and confirmed.

#### Sale or Lease; Contracts; Proceeds

Sec. 3. The Board of Managers is hereby authorized, subject to the approval of the Governor of the State of Texas, to sell for not less than One Million Dollars (\$1,000,000) or lease, or to make and enter into any other contract or contracts, agreement or agreements, whether in the nature of an option contract, trackage agreement, or of any other nature or character whatsoever, to or with any person, firm, or corporation, so long as in the judgment of the Board of Managers the best interest of said Railroad and the State will be served thereby. Such authority is to be construed to apply to all or any part of any property right, franchise, privilege or other matter or thing belonging to the Texas State Railroad or constituting a part thereof. All money received by the said Board from any sale, lease, rental, or other disposition of all or part of the facilities of the Texas State Railroad shall be transmitted to the State Treasurer and placed in a special fund, which fund shall be used for the payment of all expenses of the Board of Managers herein provided as appropriated by the Legislature, and the remaining balance shall be applied, first, to the retirement of principal of and accrued interest on the outstanding bonds of said Railroad now owned by the Public School Fund of the State of Texas; thereafter, such money shall be paid into the General Revenue Fund of this State.

#### Annual Report

Sec. 4. On or before the first day of June of each year the Board of Managers shall furnish a report to the Comptroller of Public Accounts showing the financial condition of said Railroad for the preceding calendar year. A copy of said annual report shall be mailed at the same time to the Governor. The Board is hereby authorized to employ, and to compensate from funds appropriated by the Legislature, necessary clerical help in the preparation of said annual report.

#### Audit of Lessee's Books

Sec. 5. The State Auditor shall, at the request of the Board, examine and audit the books of any railroad which has leased all or any part of the properties of the Texas State Railroad for the purpose of determining whether the financial or other report made by such lessee railroad to the Board is true and correct.

The State Auditor is hereby authorized to appoint a temporary auditor or auditors skilled in railroad accounting to assist in making such inspection and audit. The compensation and necessary travel expenses of such assistant auditor or auditors shall be paid by the Board of Managers out of funds appropriated by the Legislature for said purpose.

#### Free Transportation of Members of Board

Sec. 6. Each member of the Board of Managers is hereby authorized to receive for his personal use, and all railroad corporations and transportation lines are authorized to furnish said member, free transportation or passes over their respective line or lines of transportation.

#### Ratification of Lease

Sec. 7. The contract heretofore entered into between the Board of Managers of the Texas State Railroad and the Texas and New Orleans Railroad Company for the lease of properties belonging to the Texas State Railroad for a period of ten years, commencing the first day of January, 1953, which contract was entered into on the eleventh day of December, 1952, and approved by the Governor of Texas on the twenty-second day of December, 1952, is hereby in all things ratified and confirmed.

#### Meetings of Board

Sec. 8. The Board of Managers of the Texas State Railroad shall hold at least one regular meeting to be called by the Chairman not later than the first day of May each year, and said Board shall make one annual inspection of the property of the Texas State Railroad. The Board may hold such other meetings as may be necessary which may be called by any member of said Board. At all meetings of said Board two members shall constitute a quorum.

#### Title of State to Rails

Sec. 9. The title to all steel rail now upon the roadbed of the Texas State Railroad, and allotted to the State of Texas by the United States under an Act of Congress from the surplus materials in the possession of the United States at the conclusion of the late war with the German Imperial Government, is hereby vested in the State of Texas exclusively for the benefit of said Texas State Railroad, subject, however, to all the provisions of the aforesaid Act of Congress.

#### Purchaser's Title to Rails

Sec. 10. If hereafter the said Texas State Railroad shall be sold or otherwise disposed of under authority of law any conveyance or assignment lawfully executed pursuant to said sale shall vest title to said rail absolutely in the purchaser or grantee thereunder to the exclusion of each and every agency of the Government of the State of Texas and the United States.

[Acts 1953, 53rd Leg., p. 79, ch. 58.]

**Art. 6550a1. Aerial or Tramways to Mines**

Every person, firm, corporation, limited partnership, joint stock association or other association of any kind whatsoever, owning, constructing, operating or managing any aerial or other kind of tramway within this State between a mine, smelter or railway or either, may hold and acquire by purchase or condemnation rights-of-way, but in the exercise of such right shall be deemed to be a common carrier, and shall be subject to the jurisdiction and control of the Railroad Commission, and shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn land, rights-of-way, easement and property of any person or corporation necessary for the construction, maintenance or operation of his, its, or their aerial or other kind of tramway; such right of eminent domain for acquiring rights-of-way provided for herein, shall be exercised in the manner prescribed by law for condemning of land and acquiring rights-of-way by railroad companies.

[Acts 1927, 40th Leg., p. 379, ch. 256, § 1.]

**Art. 6550b. Repealed by Acts 1953, 53rd Leg., p. 79, ch. 58, § 12, eff. April 8, 1953**

**CHAPTER FOURTEEN. UNION DEPOT CORPORATIONS**

Article

- 6551. Union Depots.
- 6552. Finances.
- 6553. Interest in Railways.
- 6554. Condemnation.

**Art. 6551. Union Depots**

Corporations formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies own or operate a railroad, shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot. Such corporations may also add additional stories to their depot buildings and rent the same for offices or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. The Railroad Commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in Texas.

[Acts 1925, S.B. 84.]

**Art. 6552. Finances**

The provisions of Chapter 12 of this title shall govern and control the issuance of stock and bonds of such corporations as far as the same are applicable.

[Acts 1925, S.B. 84.]

**Art. 6553. Interest in Railways**

Railway companies existing under the laws of Texas, whether under general or special law, and railway companies incorporated under any general or special law of the United States, are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds of any depot company formed under the authority of this law.

[Acts 1925, S.B. 84.]

**Art. 6554. Condemnation**

Corporations created for the purposes contemplated herein may secure by condemnation such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks requisite to the convenient use of the depot. Such corporations, by such condemnation, may acquire the fee simple title. After the award by the commissioners, and pending further litigation, the corporation may enter upon and take possession of the land sought to be condemned, by complying with the terms and conditions of any general laws of this State authorizing any corporation having the right to condemn to so enter upon and take possession of such land or real estate.

[Acts 1925, S.B. 84.]

**CHAPTER FIFTEEN. VIADUCTS**

Article

- 6555. Certain Cities May Contract.
- 6556. May Close Streets.
- 6557. May Issue Bonds.
- 6558. Condemnation.
- 6559. May Enforce Contracts.
- 6559a. Height of Bridges or Viaducts.
- 6559b. Structures Near Tracks.
- 6559c. Roof Projections Over Tracks.
- 6559d. Not Applicable When.
- 6559e. Penalty Recoverable by Attorney General.
- 6559f. Regulation by Commission.
- 6559g-1. Consolidation of Railroad Corporations.
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- 6559h-1. Station to Bear Name of Post Office.
- 6559h-2. Exceptions.
- 6559h-3. To Do Repair Work in State.
- 6559h-4. Exceptions.
- 6559h-5. Air Brake Inspection.
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- 6559h-7. Using Tracks to Repair Cars.
- 6559h-8. Duty of Train Dispatcher.
- 6559h-9. Failing to Bulletin Passenger Train.
- 6559h-10. Animal Found Dead Along Railroad.
- 6559h-11. Failure to Ring Bell or Blow Whistle; Stop at Crossings; Ordinances.
- 6559i-1. Refusal to Permit Inspection.
- 6559i-2. Refusal to Answer.
- 6559i-3. False Billing or Classification.
- 6559i-4. "Unjust Discrimination".
- 6559i-5. Not Applicable, When.
- 6559i-6. Persons Compelled to Testify.
- 6559i-7. False Statement to Secure Bond Registration.

**Art. 6555. Certain Cities May Contract**

All cities acting under special charters granted by the legislature are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to here-

after make contracts with railway companies owning or operating tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities.

[Acts 1925, S.B. 84.]

#### Art. 6556. May Close Streets

All such cities are hereby given authority to abolish and close such portions of any highway, street or alley crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies.

[Acts 1925, S.B. 84.]

#### Art. 6557. May Issue Bonds

Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars for the purpose of raising sufficient funds to pay for the right of way for a viaduct, over such property or<sup>1</sup> may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. The question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition, such cities are hereby given authority to give railroad companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Should probably read "as".

#### Art. 6558. Condemnation

All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way purposes for viaducts and approaches to same forming a necessary part of such viaduct.

[Acts 1925, S.B. 84.]

#### Art. 6559. May Enforce Contracts

All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where such viaduct or viaducts are to be completed or through any other lawful means.

[Acts 1925, S.B. 84.]

#### Art. 6559a. Height of Bridges or Viaducts

All bridges, viaducts, overheadways, foot bridges, wires or other structures hereafter

built over the tracks of a railway, or over the tracks of railroads, by the State, or by a county, municipality, a railroad company or other corporation, firm, partnership, or natural person, shall be placed not less than twenty-two (22) feet in the clear from the top of the rails of such track or tracks to such structure or wire, or to the bottom of the lowest sill, girder or crossbeam, the lowest downward projection on the bridge, viaduct, overheadway, or foot bridge or other structure.

[Acts 1925, 39th Leg., ch. 11, p. 32, § 1.]

#### Art. 6559b. Structures Near Tracks

All loading platforms and all houses and structures, and all fences, and all lumber, wood and other materials hereafter built, placed or stored along the railroads of this State, either on or near the right of way of the main lines, or on or near any spur, switch or siding of any such railroad, shall be so built, constructed, or placed that there shall be not less than eight and one-half (8½) feet space from the center of such main line, spur, switch or siding to the nearest edge of the platform, or to the wall of the building, or to the lumber, wood, or other material.

[Acts 1925, 39th Leg., ch. 11, p. 32, § 2.]

#### Art. 6559c. Roof Projections Over Tracks

All roof projections hereafter constructed from any loading platform along any railroad main track, or spur, switch, or siding track shall be not less than twenty-two (22) feet above the rails of such track, and the other edge of said roof projection shall be not less than eight and one-half (8½) feet horizontally from the center of said track.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 3.]

#### Art. 6559d. Not Applicable When

The provisions of this Act shall not apply to nor prevent the building, placing, constructing or completing of structures or other things enumerated in Sections One, Two and Three, when same are being built, placed, or are in the courses of construction at the time this Act takes effect, or if material has been purchased for such placing, building, or construction at the time this Act takes effect, pursuant to prior contracts or plans.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 3a.]

#### Art. 6559e. Penalty Recoverable by Attorney General

If any railway company or other corporation, firm, partnership, or person shall hereafter erect any structure or wire in violation of any provision of this Act, or shall hereafter in any manner violate any provision of this Act, it shall be the duty of the Attorney General immediately to file a suit in court of competent jurisdiction, to collect a penalty, which is hereby prescribed of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars for each violation of this Act; and the Attorney General may, in his dis-

cretion, sue in one proceeding for all violations of this Act by any one railway company or other corporation, firm, partnership or person. Provided further, that the said penalty shall accrue for each day such structure, wire, lumber, wood or other material is permitted to remain in violation of this Act, and each day same is permitted to remain, constitutes a separate violation of this Act.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 4.]

#### Art. 6559f. Regulation by Commission

It is hereby made the duty of the Railroad Commission to promulgate rules and regulations in accordance with this Act. It is further provided that upon application regularly made and filed, and after notice to the Attorney General, the Railroad Commission may, for good cause shown, permit any railway company or other corporation, firm, partnership, or person, or any county or municipality to deviate from the terms of this Act in accordance with an order of the Commission made and entered; and in such event the corporation, firm, partnership, or person acting in accordance with the order of the Railroad Commission so made shall not be deemed to have violated this Act.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 5.]

#### Art. 6559g-1. Consolidation of Railroad Corporations

Railroad corporation, or other corporation, as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation, or other corporation, or the lessee, purchasers or managers of any railroad corporation shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. Any officer, director, manager, superintendent, agent, purchaser or lessee of any such railroad corporation, or other corporation, who violates or aids in violating any provision of this article shall be fined not less than one thousand dollars nor more than four thousand dollars. Indictments and prosecutions under this article may be found and made in any county through or into which the line of railroad may run.

[1925 P.C.]

#### Art. 6559g-2. Exceptions

The preceding article shall not apply to one who has not by virtue of his office, agency, or position, a voice in the management of the railway company, or who has not, by virtue of his

office, agency or position, some power to prevent a violation of such law.

[1925 P.C.]

#### Art. 6559h-1. Station to Bear Name of Post Office

Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this State who shall retain, maintain or establish a name for any railway station or depot in any incorporated or unincorporated town or city within this State other than the name of the town or city which has and bears the name of its post office so given by the United States Government shall be fined not less than two hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. The venue shall be in the county where the station in question is located.

[1925 P.C.]

#### Art. 6559h-2. Exceptions

The preceding article shall not apply to two or more incorporated or unincorporated towns or cities which now are situated within five miles of each other, and which each have therein established a post office named and designated by the United States Government, nor to those cases where the post office name is so similar in sound or otherwise to that of some other station upon such railroad as that confusion in train orders and directions may arise therefrom. Where the name of such place is changed by the Federal postal department such railway shall not be required to again change the name of its station.

[1925 P.C.]

#### Art. 6559h-3. To Do Repair Work in State

All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment, owned or leased by said corporation in this State, when such rolling stock is within the State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. Any lessee, receiver, superintendent or agent of such railway corporation who violates any provision of this article shall be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

#### Art. 6559h-4. Exceptions

The preceding article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal

safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State.

[1925 P.C.]

#### Art. 6559h-5. Air Brake Inspection

The air brakes and air brake attachments on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. Whoever operates or causes to be operated any such train without such inspection shall be fined not less than fifty nor more than one hundred dollars.

[1925 P.C.]

#### Art. 6559h-6. Exceptions to Brake Inspection

The preceding article shall not apply to tram roads engaged in hauling logs to a sawmill, nor to railroads under forty miles in length.

[1925 P.C.]

#### Art. 6559h-7. Using Tracks to Repair Cars

No person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any person operating any railroad, machine shop or other concern engaged in the repairing or manufacture of cars in this State who shall violate this law shall be fined not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense.

[1925 P.C.]

#### Art. 6559h-8. Duty of Train Dispatcher

The train dispatcher shall keep all agents at stations having telegraph offices in or near them informed of the movement of each passenger train one hour prior to the time such train is due, according to the published schedule, at such stations. If any such passenger train is delayed for more than one hour, according to said published schedule, then it shall be the duty of such train dispatcher to inform such local agent how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish such information, he shall be fined not less than fifty nor more than two hundred dollars for each offense.

[1925 P.C.]

#### Art. 6559h-9. Failing to Bulletin Passenger Train

Every railroad agent at stations having telegraphic communication with the train dispatcher of the railroad, shall ascertain one

hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. If the train is late, such agent shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of the probable arrival of such train. If such agent shall fail or refuse to perform any duty required of him by this article, he shall be fined not less than fifty nor more than one hundred dollars for each offense.

[1925 P.C.]

#### Art. 6559h-10. Animal Found Dead Along Railroad

Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal be buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of record in his office without exacting any fees from the section foreman for filing same, and any person violating any of these provisions shall be fined not less than five nor more than twenty-five dollars.

[1925 P.C.]

#### Art. 6559h-11. Failure to Ring Bell or Blow Whistle; Stop at Crossings; Ordinances

Any engineer having charge of a locomotive engine while such engine is approaching a place where two lines of railway cross each other, who shall, before reaching such railway crossing fail to bring such engine to a full stop or who shall fail to blow the whistle and ring the bell on such engine at the distance of at least eighty (80) rods from the place where the railroad shall cross any public road or streets, or who shall fail to keep said bell ringing until such engine shall have crossed said road or street or stopped, shall be fined not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars, provided that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, or shall have a flagman in attendance at such crossings; provided, however, that the governing bodies of every city or town having a population of five thousand (5,000) or more inhabitants according to the last Federal Census may regulate by ordinance the ringing of bells and

blowing of whistles within their corporate limits, and a compliance with said ordinance, will be full compliance with the terms and provisions of this Act and a sufficient warning to the public at such crossings as such ordinance may affect.

[1925 P.C.; Acts 1931, 42nd Leg., p. 184, ch. 107, § 2; Acts 1941, 47th Leg., p. 349, ch. 189, § 2.]

#### Art. 6559i-1. Refusal to Permit Inspection

Any officer, agent or employé of any railroad company who shall, upon proper demand, fail or refuse to exhibit to any member of the Railroad Commission of Texas or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent, or employé, shall be fined not less than one hundred and twenty-five dollars nor more than five hundred dollars.

[1925 P.C.]

#### Art. 6559i-2. Refusal to Answer

If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks to said Railroad Commission as provided by law, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be fined five hundred dollars for each day he shall fail to perform such duty, after the expiration of the time allowed by law to so answer.

[1925 P.C.]

#### Art. 6559i-3. False Billing or Classification

Any officer or agent of any railroad subject to the jurisdiction of the Railroad Commission, who by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any persons to obtain transportation for property at less than the regular rates then in force on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

#### Art. 6559i-4. "Unjust Discrimination"

If any officer, agent, clerk, servant or employé, or any receiver, or his servant, agent or employé, of any railroad company in this State shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company than such railroad company, or its said officers, agents, clerks, servants or employés, or receiver thereof, charges, de-

mands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employé, or receiver, or his agents, servants or employés, of any railroad company in this State, shall, on behalf of such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered or to be rendered by such railroad company, or shall subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employé, or receiver, his agents, servants or employés, of such railroad company, shall be confined in the penitentiary not less than two nor more than five years.

[1925 P.C.]

#### Art. 6559i-5. Not Applicable; When

Nothing herein shall prevent the carriage, storing or handling, by railroad companies in this State, or by their agents, officers, clerks, servants and employés, of freight free or at reduced rates, or to prevent railroads, their agents, employés and officers, from giving free transportation or freight rates to any railroad officers, agents, employés, attorneys, stockholders or directors, or to any other officer or person, when permitted by the laws of this State.

[1925 P.C.]

#### Art. 6559i-6. Persons Compelled to Testify

Any court, officer or tribunal having jurisdiction of any offense mentioned in article 1687, or any district or county attorney may subpoena persons and compel their attendance as witnesses to testify as to any violation of said article; and any person so summoned and examined shall not be liable to prosecution for any offense by reason of violation of said article about which he may testify; and for any offense by reason of violation of said article, a conviction may be had upon the unsupported evidence of an accomplice or participant.

[1925 P.C.]

#### Art. 6559i-7. False Statement to Secure Bond Registration

Each railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall by false statement knowingly made procure of the Railroad Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with knowledge of such fraud negotiate or cause to be negotiated any such bond or other security issued in violation of law, shall be confined in the penitentiary not less than two nor more than fifteen years.

[1925 P.C.]

TITLE 113

**RANGERS—STATE [Repealed]**

Arts. 6560 to 6573. Repealed by Acts 1953,  
53rd Leg., p. 32, ch. 26, § 1

## TITLE 113A

### REAL ESTATE DEALERS

#### Article

6573a. The Real Estate License Act.

6573b. Penalty for Violation of Act.

#### Art. 6573a. The Real Estate License Act

##### Short Title of Act

Sec. 1. This Act shall be known and may be cited as "The Real Estate License Act."

##### The Texas Real Estate Commission

Sec. 2. The administration and enforcement of this Act shall be vested in the "Texas Real Estate Commission" (hereinafter referred to as the Commission), consisting of six members appointed by the Governor with the advice and consent of the Senate. Their terms of office shall be for six years, and members serving at the time this Act takes effect shall continue to serve the terms for which they were appointed. Members shall be reputable citizens of Texas, qualified voters, and actively engaged in the real estate business as brokers on a full time basis for at least five years next preceding the date of their appointments. Within fifteen days after their appointments they shall qualify by taking the Constitutional oath of office and shall furnish a bond payable to the Governor of Texas in the penal sum of Ten Thousand Dollars (\$10,000) conditioned upon the faithful performance of their duties as provided by law. They shall receive their actual expenses incurred in the performance of their duties, and a per diem of Twenty-five Dollars per day not exceeding forty days for any one year. At a regular meeting in October each year the Commission shall elect from its own membership the following officers: a Chairman, Vice-Chairman, and Secretary. A quorum of the Commission shall consist of not less than four members.

The Commission is authorized to employ an Administrator, an Assistant Administrator and such other employees and officers as shall be necessary to effectively administer and enforce this Act and regulate the real estate brokerage business in the State of Texas, assign their duties and fix the amount of their salaries in an amount not to exceed those provided by the General Appropriations Bill. The Commission shall enforce and administer the provisions of this Act, and is authorized to conduct hearings, examinations and investigations, summon and require witnesses to be examined under oath, administer oaths, and keep such records and minutes as shall be necessary. The Commission shall adopt such rules and regulations, not inconsistent with this Act, as shall be necessary or appropriate to effectively administer and enforce this Act, regulate the real estate

brokerage business, and establish canons of professional ethics and conduct for its licensees. The office of the Commission shall be at Austin, Texas, which shall be its official residence and where all of its permanent records shall be kept. The Commission shall adopt an official seal and licenses of suitable design and content.

Whenever in this Act any power, right or duty (except the authority to make rules and regulations) is conferred upon the Commission, such power or right shall be exercised by the Administrator and such duty shall rest upon the Administrator unless the Commission shall otherwise order or direct by an order entered in the minutes of such Commission; and in such case, the power, right or duty shall rest in or on the Commission. Service of process upon the Administrator or the Assistant Administrator shall be service of process upon the Commission. Any reports, notices, applications, or instruments of any kind required to be filed with the Commission shall be considered filed with the Commission if filed with the Administrator. Where a decision, order, or act of the Commission is referred to in this Act (other than an order of the Commission relative to the Administrator or his powers, rights, duties), it shall also mean and include any order, decision or act of the Administrator. Wherever the Commission is authorized herein to delegate authority or to designate agents, the Administrator shall have such rights and the power to so delegate authority and designate agents, unless the Commission shall enter its order in the minutes directing otherwise. The Administrator shall act as Manager, Secretary and Custodian of all records unless the Commission shall otherwise order, and shall devote his entire time to his office.

All members, officers, employees and agents of the Commission shall be subject to the code of ethics and standards of conduct imposed by Chapter 100, Acts of the 55th Legislature, Regular Session, 1957 (codified as Article 6252-9, Vernon's Texas Civil Statutes).

##### License Required

Sec. 3. From and after the effective date of this Act it shall be unlawful for any person, partnership, association or corporation to engage in or carry on directly or indirectly, or to advertise or hold himself, itself, or themselves out as engaging in, or carrying on, the business, or to perform any act of a Real Estate Broker or a Real Estate Salesman, as herein defined, within this State, without first obtaining a license as a Real Estate Broker or Real Estate Salesman as provided for in this Act.

## Responsibility for Acts and Conduct

Sec. 3.1. Every Real Estate Broker licensed pursuant to this Act shall be responsible to the Commission, members of the public and his clients for all acts and conduct performed under this Act by himself or by any Real Estate Salesman associated with or acting for such broker.

## Definitions

Sec. 4. The following terms shall, unless the context otherwise indicates, have the following meaning:

(1) The term "Real Estate Broker" shall mean and include any person who, for another or others and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation:

(a) Sells, exchanges, purchases, rents or leases real estate;

(b) Offers to sell, exchange, purchase, rent or lease real estate;

(c) Negotiates, or offers or attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

(d) Lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange or trade;

(e) Appraises or offers or attempts or agrees to appraise real estate;

(f) Auctions, or offers or attempts or agrees to auction real estate;

(g) Buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(h) Collects or offers or attempts or agrees to collect rentals for the use of real estate;

(i) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate;

(j) Procures or assists in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

(k) Procures or assists in the procuring of properties calculated to result in the sale, exchange, leasing or rental of any business enterprise, or sells, exchanges, purchases, rents, or leases any business enterprise;

(l) Subdivides real estate into two or more parts or tracts which are to be sold, leased, exchanged or rented to others, or for the purpose of erecting buildings for residential or business purposes to be sold, leased, exchanged or rented.

(2) The term "Real Estate Broker" shall also include any person employed by or on behalf of the owner or owners of real es-

tate at a stated salary or upon a commission or upon a salary and commission basis or other compensation to sell, exchange or offer for sale such real estate or any part thereof who shall sell, exchange or offer or attempt or agree to negotiate the sale or exchange of any lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, or renting a property and holding himself out as a full or part-time broker in real estate, then such person employed by said owner may be licensed as a salesman.

(3) The term "Real Estate Broker" shall also include any person, partnership, association, or corporation engaged in the business of buying, selling, exchanging, leasing, renting of property for himself or itself or who holds himself, themselves or itself out as a broker in real estate, or engages in the activities of a Real Estate Broker as an occupation, business, or profession on either a full or part-time basis.

(4) The term "Real Estate Salesman" shall mean and include any person employed or engaged by or in behalf of a licensed Real Estate Broker to do or deal in any act, acts, or transactions set out and comprehended by the definition of a "Real Estate Broker" in Subdivisions (1), (2) and (3) of this Section. The term "Real Estate Salesman" shall not include a partnership, association or corporation.

(5) The word "compensation" shall mean and include any fee, commission, salary, money or valuable consideration, as well as the promise thereof and whether contingent or otherwise.

(6) The word "person" shall mean and include any individual, firm, partnership, association or corporation.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in the plural number, include the singular number; "and" may read "or"; and "or" may be read "and".

## Acts Constituting Broker or Salesman

Sec. 5. Any one act set out in Section 4, Subdivision (1), when performed for another or others for compensation or valuable consideration or with the intention or in the expectation or upon the promise of receiving or collecting compensation shall constitute a person, partnership, association, or a corporation performing, offering or attempting to perform such act or acts, a Real Estate Broker or a Real Estate Salesman within the meaning of this Act.

## Exemptions

Sec. 6. (1) The provisions of this Act shall not apply to the advertising, negotiation or

consummation of any purchase, sale, rental or exchange of, or the borrowing or lending of money on, real estate by any person, firm, or corporation when such person, firm or corporation does not engage in the activities of a Real Estate Broker as an occupation, business or profession on a full or part-time basis.

(2) The provisions of this Act shall not apply to Acts performed in the management of property or investment funds by the owner thereof or his regular employees when such an owner or employee does not advertise or hold himself out as a broker in or salesman of real estate and does not conduct such management in a manner as to lead an ordinary person to believe that such owner or employee is a whole or part-time broker in or salesman of real estate.

(3) The provisions of this Act shall not apply to any person acting as attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchanging of real estate, nor shall this Act be construed to include in any way services rendered by an attorney at law, nor shall it be held to apply to the acts of any person while acting as an escrow holder, receiver, trustee in bankruptcy, administrator or executor, or to any person doing any of the acts specified in this Act under order of any court, nor to apply to the trustee acting under a trust agreement, deed of trust or will, nor to the regular salaried employees thereof, nor shall this Act apply to public officers or employees while performing their duties as such.

(4) This Act shall not apply to the sale, lease or transfer of any property when such sale, lease or transfer is made by the owner, or one of the owners, or the attorney for said owner or owners, or his or its regular employees, unless the owner or owners or the attorney for said owner or owners is engaged wholly or in part in the business of selling real estate.

#### Eligibility for License

Sec. 7. (a) No individual applicant shall be eligible to be licensed under the terms of this Act unless such applicant is at the time of filing such application at least twenty-one (21) years of age, or shall have had his disabilities of minority removed as provided by law, an actual bona fide resident of this State and shall have been an actual bona fide resident of this State for at least sixty (60) days immediately preceding the filing of such application. No partnership or association shall be eligible to be licensed unless the members thereof have the above qualifications of an individual applicant. No corporation shall be licensed unless the officers thereof have the above qualifications of an individual applicant. Provided, however, the above provision as to residence shall not apply to nonresident applicants who may apply for license under the terms of Subdivision (b) hereinafter set forth.

(b) A nonresident of this State may be licensed as a Real Estate Broker or Salesman providing such nonresident is at the time licensed as a broker in real estate under the laws of the State where he or it resides, and which said State has legal standards of qualification which the Commission finds equivalent to this Act; provided, however, that such nonresident must procure from the agency administering such law in such State, a certificate as to such license and recognizing and approving the reliability and standing of such nonresident in such other State, and file same with the Commission; and provided further, that said nonresident licensee shall at all times maintain a place of business in this State in conformity with the requirements as to resident licensees. Nothing herein is intended to prohibit real estate transactions in this State by nonresidents if conducted by a resident licensed broker or salesman.

Notwithstanding the foregoing provisions of this subsection, a nonresident of this State who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this State, and who shall have been an actual bona fide resident thereof for at least sixty (60) days immediately preceding the filing of his application, shall be eligible to be licensed as a Real Estate Broker or Salesman under this Act in the same manner as a resident of this State. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he resides or in the city in this State which is contiguous thereto, and he shall not maintain a place of business at any other location in this State unless he also complies with the requirements of the first paragraph of this subsection; and provided further, that such place of business must satisfy the requirements of subsection (a) of Section 13 below, but such place of business shall be deemed a definite place of business in this State within the meaning of said subsection (a) of Section 13 below.

(c) Every nonresident applicant, before the issuance of license, shall file an irrevocable consent that suits and actions may be commenced against such applicant by service of process on the Administrator; and stipulating and agreeing that said service of process shall be taken and held by all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. The instrument containing such consent shall be executed and acknowledged by the applicant if an individual, by a partner if a partnership, by an officer if an association or corporation, and authenticated by the seal thereof if a corporation. All such applications, except from individuals or partnerships shall be accompanied by a certified copy of a resolution authorizing the officer to execute the same. In case of any process or service upon the Commission, it shall be by duplicate copies, one of which shall be filed in the office of the

Administrator, and the other immediately forwarded by registered mail to the main office of the applicant against whom said process is directed as stated in the instrument authorizing such service.

(d) Any person, firm, partnership, association, or corporation holding a Real Estate Broker's license, who are nonresidents of the State shall pay the same filing fee as is required of resident licensees.

#### Application for License

Sec. 8. (a) Any person desiring to act as a Real Estate Broker or Salesman in this State shall file with the Commission an application for license. The application shall be in such form and contain such information as the Commission may prescribe, including but not limited to the following:

(1) The name and address of the applicant; and if the applicant shall be a partnership or association, the name and address of each member thereof; if it is a corporation, the name and address of each officer and each director thereof;

(2) The name under which the business shall be conducted;

(3) The place or places, including the street and number and the town, village or city and county, where the business is to be conducted;

(4) The business or occupation engaged in by the applicant and every member or officer thereof for a period of not less than five (5) years immediately preceding the date of application;

(5) The time and place and experience of the applicant and every member or officer thereof in the real estate business as a Real Estate Broker or Salesman;

(6) Whether the applicant or any member or officer thereof has ever been convicted of or is under indictment for forgery, embezzlement, obtaining money under false pretense, larceny, extortion, any crime involving moral turpitude, conspiracy to defraud or other like offense or offenses, and whether applicant or any member or officer thereof has ever had a license to engage in any occupation, business or profession cancelled, revoked or suspended and the reasons therefor;

(7) Whether the applicant or any member or officer thereof has ever been refused a Real Estate Broker's or Salesman's license or any other occupational, business or professional license in this or any other State;

(8) If the applicant is a partnership, association or corporation, the name of a designated member or officer thereof who is to carry on the activities of Real Estate Broker on behalf of the partnership, association or corporation, who shall be designated as agent of the partnership, association or corporation for that purpose;

(9) If the applicant is a member of a partnership or association subject to being licensed hereunder, or an officer of any corporation subject to being licensed hereunder, the name and office address of the partnership, association or corporation of which said applicant is such member or officer;

(10) Such application for a Broker's license shall be made by applicant. If such application is made by a partnership or association, it shall be filed by all members thereof. If made by a corporation, it shall be filed by the president and secretary thereof.

(b) An individual's application shall be accompanied by recommendations of at least three (3) citizens not related to the applicant, who have owned real estate for a period of three (3) years or more in the county in which the applicant resides or intends to reside or establish his place of business, and who have known applicant for a period of three (3) years or more, which recommendation shall be under oath and shall certify that the applicant has a reputation for honesty, truthfulness, fair dealings, and competency, and shall recommend that license be granted to the applicant. If the applicant cannot procure such recommendation for the reason that he has not resided in the county for three (3) years, he may furnish three recommendations from three (3) persons where the applicant may have resided for three (3) years prior to the filing of his application.

(c) Every partnership or association in its application shall designate and appoint one of its members as agent broker and every corporation in its application shall designate one of its officers as agent broker. The application of the said partnership, association, or corporation shall be accompanied by an application by such designated agent broker in the same form as individual applicants. Upon compliance with all requirements of law by the partnership, association, or corporation as well as by the said designated member or officer, the Commission shall issue a Broker's license to said partnership, association, or corporation, which shall bear the name of such member or officer and thereafter the member or officer so designated shall without payment of any further fee be entitled to perform all the acts of a Real Estate Broker contemplated by the provisions of this Act; provided, however, said license shall entitle such member or officer so designated to act as a Real Estate Broker only as officer or agent of said partnership, association or corporation and not on his own behalf; and provided further, that if in any case the person so designated shall be refused a license by the Commission, or in case such person ceases to be connected with such partnership, association, or corporation, said partnership, association or corporation shall be entitled to designate another person to qualify and act as in the first instance, upon qualification of the designated agent;

(d) Each and every member or officer of a partnership, association or corporation who acts as a Real Estate Broker, other than the Agent Broker of the partnership, association or corporation shall be required to make application for and take out a separate Broker's license in his own name individually. Should the license of any partnership, association or corporation, or the license of any member or officer thereof, be suspended, revoked or cancelled for violation of any provision of this Act, all other licenses of such concerns and their members and officers may be suspended until the business relationship with the violator is terminated to the satisfaction of the Commission.

(e) Every application for a Salesman's license shall be made in writing upon a form prescribed by the Commission and shall contain such information as required in a Broker's application, and shall also set forth a period of time, if any, said applicant has been in such business, stating the name and address of his last employer, the name and place of business of the person or company employing him, and in what capacity he is employed or into whose service he is about to enter. The application shall be accompanied by a certified written statement by the Broker into whose service he is about to enter, certifying that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the applicant be granted a license. Every application for a Salesman's license shall be certified by the applicant.

(f) Every application for a Real Estate Broker's license or a Salesman's license shall be accompanied by the fee prescribed in this Act. In the event the Commission does not issue the license through no fault of the applicant, the fee shall be returned to the applicant.

(g) No license shall ever be denied because such applicant or licensee may not devote full time to the real estate business.

#### Additional Information May be Required

Sec. 9. Application for a Real Estate Broker's or Real Estate Salesman's license shall contain such other information as to the applicant, in addition to the above prescribed, as the Commission shall require. The Commission may require such other proof through the application or otherwise as the Commission shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity and professional competency of the applicant. However, the professional competency of the applicant shall be judged solely on the basis of the written examination referred to in Section 10 of this Act.

#### Examinations

Sec. 10. Competency as referred to in Section 9 of this Act shall be established by an examination prepared by or under the supervision of the Commission and given at such times and places within Texas as the Commis-

sion shall prescribe. The examination shall be of scope sufficient in the judgment of the Commission to determine that a person is competent to act as a Real Estate Broker or Salesman in such manner so as to protect the interest of the public. An applicant who has failed to pass the examination twice shall be ineligible for a further application and examination until six (6) months after the second failure.

From and after the effective date of this Act, on the first application for renewal of a salesman's license after the salesman has been licensed for at least one year or on any application for a salesman's license after such first year of licensure, the applicant shall furnish to the Commission satisfactory proof that he has been actively engaged as a Real Estate Salesman for at least one year and has satisfactorily completed a course of study consisting of at least thirty classroom hours or equivalent correspondence hours of real estate courses. Such courses shall include but not be limited to the following: knowledge of the English language, including reading, writing and spelling; arithmetical calculations as used in real estate transactions; rudimentary principles of conveyancing; the general purposes and effect of deeds, trusts, mortgages, land contracts of sales, leases, liens and listing contracts; elementary principles of land economics and appraisals; fundamentals of obligations between principal and agent; principles of real estate practice and canons of ethics pertaining thereto; the provisions of this Act and rules and regulations of the Commission. No requirement to show proof of a course of study in real estate courses shall be made of a person who is licensed as a Real Estate Salesman at the effective date of this Act.

From and after the effective date of this Act, each applicant for a license as a Real Estate Broker shall furnish the Commission satisfactory proof that he has successfully completed ninety hours of classroom instruction or equivalent correspondence hours in real estate courses above set forth and shall have been actively engaged in the real estate brokerage business as a Real Estate Salesman under this Act for at least one year.

No requirement to show proof of a course of study in real estate courses shall be made of a person who is licensed as a Real Estate Broker at the effective date of this Act.

Any applicant for a license as a real estate broker or real estate salesman may submit a certification of any university, college or junior college which is a member of the Association of Texas Colleges and Universities, or from any privately owned school approved by the Commission other than accredited institutions of higher learning, that applicant has completed the prescribed courses for such applicant; and such certificate shall be deemed to be full compliance with the requirements of this Act for the completion of a course of study.

The examination and course requirements under the provisions of this Act shall not apply to any individual who held a license for at least one year and whose license expires while said individual is on active duty with the armed forces of the United States; provided he makes proper application for renewal of said license within one year after the effective date of this Act.

#### Bond

Sec. 11. Immediately upon approval of the application the applicant shall be notified and before the license shall be issued, a bond executed by the applicant, as principal, and a surety company authorized to do business in this State, as surety, shall be furnished to the Commission in the principal sum of Three Thousand (\$3,000.00) Dollars for a Broker and Two Thousand (\$2,000.00) Dollars for a Salesman, payable to the Commission for the use and benefit of any injured party, and conditioned that the applicant will pay any judgment recovered by any person in any suit for damages or injury caused by a violation of this Act. Every Broker and Salesman holding a license under this Act shall within thirty (30) days after the effective date of this Act, furnish and maintain such bond as a condition to the continued validity of such license. Provided, however, that no member of the Commission shall be eligible to act as agent for the writing of the bond as provided for in this Section, neither shall he be eligible to receive any emolument or commission for this service.

#### Issuance and Custody of License

Sec. 12. (a) If the Commission is satisfied that the applicant for a Real Estate Broker's or Real Estate Salesman's license is of good business repute and that the business will be conducted in an honest, fair, just and equitable manner, and upon complying with all other provisions of law and conditions of this Act, a license will thereupon be granted by the Commission to the successful applicant therefor as a Real Estate Broker or Real Estate Salesman, and the applicant, upon receiving possession of the license, is authorized to conduct the business of a Real Estate Broker or Real Estate Salesman in this State.

(b) The Commission shall issue to each licensee a license in such form and size as shall be prescribed by the Commission. This license shall show the name and address of the licensee, and in case of a Real Estate Salesman's license, shall show the name of the Real Estate Broker by whom he is employed. Each license shall have imprinted thereon the seal of the State of Texas, and in addition to the foregoing shall contain such matter as shall be prescribed by the Commission. The license of each Real Estate Salesman shall be delivered or mailed to the Real Estate Broker by whom such Real Estate Salesman may be employed and shall be kept under the custody and control of such Broker.

(c) The Commission shall prepare and deliver to each licensee a pocket card, which card, among other things, shall contain an imprint of the seal of the State of Texas, and shall certify that the person whose name appears thereon is a licensed Real Estate Broker or Real Estate Salesman, as the case may be; and if it is a Real Estate Salesman's card, it shall also contain the name and address of his employer; the matter to be printed on such pocket card except as above set forth, shall be prescribed by the Commission.

#### Place of Business

Sec. 13. (a) Every Real Estate Dealer licensed under this Act shall have and maintain a definite place of business in this State, and such place of business may be in a portion of licensee's home set aside for said purpose. The license of the Real Estate Broker shall at all times be prominently displayed in licensee's place of business and a duplicate of said license shall likewise be prominently displayed in all branch offices of the licensee. The said place of business shall be specified in the application for license and designated in the license. However, such place of business shall not be in violation of any local laws or deed restrictions which shall be determined by the applicant.

(b) All Real Estate Brokers shall also prominently display in their place or places of business the licenses of all Real Estate Salesmen employed by them therein or in connection therewith. All licenses issued to Real Estate Salesmen shall designate the employer of said Salesmen by name.

(c) Upon change of address of any Broker from that shown in any license held by him or his Salesmen, the Broker shall immediately return such licenses to the Commission together with a fee of Two (\$2.00) Dollars for each license, and the Commission shall issue new licenses for the unexpired term of the returned licenses showing the new address as designated by the Broker.

#### Change of Employer by Salesman

Sec. 14. Prompt notice in writing within ten (10) days shall be given to the Commission by any Real Estate Salesman of his change of employer and the name of the new employer into whose service he is about to enter or has entered, and a new license will thereupon be issued by the Commission to such Salesman for the unexpired term of the original license; provided, that such new employer shall be a duly licensed Real Estate Broker. The Real Estate Broker shall at the time of mailing such Real Estate Salesman's license to the Commission, notify the Salesman thereof at the address of such Real Estate Salesman that this license has been mailed or delivered to the Commission. A copy of such communication to the Real Estate Salesman shall accompany the license when mailed or delivered to the Commission. It shall be unlawful for any Real Estate Salesman to perform any of the acts con-

templated by this Act, either directly or indirectly, under the authority of said license and after the date of receipt of said license from said Broker by the Commission; provided, that another license shall not be issued to such Real Estate Salesman until he has returned his former pocket card to the Commission or shall satisfactorily account to the Commission for the same; provided further, that not more than one license shall be issued to any Real Estate Salesman for the same period of time. The Commission shall issue a new license to said Salesman within ten (10) days from date of receipt of the application for transfer and the payment of the transfer fee as provided for herein.

#### Hearing on Application

Sec. 15. If the Commission declines or fails to license an applicant, it shall immediately give notice of the fact to the applicant; and upon request from such applicant, filed within ten (10) days after the receipt of such notice, shall fix a time and place for hearing, of which ten (10) days notice shall be given to such applicant, and to other persons interested or protesting, to offer evidence relating to the Real Estate Broker's and/or Salesman's application. In such case the Commission shall fix the time of such hearing on a date within thirty (30) days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. If satisfied as aforesaid as a result of such hearing, the Commission shall thereupon license the Real Estate Broker and/or Salesman if all other provisions of this Act shall have been met.

#### Revocation and Suspension of License

Sec. 16. The Commission may, upon its own motion, and shall, upon the verified complaint in writing of any persons, provided such complaint, or such complaint together with evidence, documentary or otherwise, presented in connection therewith shall provide reasonable cause, investigate the actions and records of any real estate broker or real estate salesman and shall have the power to suspend or revoke any license issued under the provisions of this Act at any time when it has been determined that:

(a) the licensee has been convicted of a felony, or

(b) the license has been obtained by false or fraudulent representation, or

(c) the licensee, while performing any of the acts constituting a Broker or Salesman as defined by this Act, has been guilty of:

(1) Knowingly making a substantial misrepresentation; or

(2) Making any false promise with intent to influence, persuade or induce; or

(3) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salesmen, advertising, or otherwise; or

(4) Failure to make clear to all parties to a transaction for which party he is acting, or receiving compensation from more than one party, except with the full knowledge and consent of all parties; or

(5) Failing within a reasonable time to account for or remit moneys coming into his possession which belong to others, or commingling of moneys belonging to others with his own funds; or

(6) Paying commission or fees to or dividing commission or fees with anyone not licensed as a real estate broker or salesman in this State or any other state, or attorney-at-law in this State or any other state; or

(7) Using any misleading or untruthful advertising including the use of any trade name or insignia of membership of any real estate organization of which he is not a member; or

(8) Accepting, receiving, or charging any undisclosed commission, rebate or direct profit on expenditures made for a principal; or

(9) Soliciting, selling or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(10) Acting in the dual capacity of broker and undisclosed principal in any transaction; or

(11) Guaranteeing, authorizing or permitting any person to guarantee future profits which may result from a resale of real property; or

(12) Placing a sign on any property offering it for sale or rent without the consent of the owner or his authorized agent; or

(13) Inducing or attempting to induce any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract; or

(14) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of any real property with an owner or lessor, knowing that such owner or lessor had a written outstanding contract, granting exclusive agency in connection with such property, with another real estate broker; or

(15) Offering real property for sale or for lease without the knowledge and consent of the owner or his autho-

rized agent, or on any terms other than those authorized by the owner or his authorized agent; or

(16) Publishing, or causing to be published, any advertisement including but not limited to advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner whatsoever tends to create a misleading impression, or which fails to carry plainly the name of the broker causing the advertisement to be published; or

(17) Having knowingly withheld from or inserted in a statement of account or invoice, any statement that made it inaccurate in any material particular; or

(18) Publishing or circulating any unjustified or unwarranted threats of legal proceedings, or other actions; or

(19) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with any person to circumvent the requirements of this Act; or

(20) Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto; or

(21) Failing to advise a purchaser in writing before the closing of the transaction concerned, that said purchaser should either have the abstract, covering real estate which is the subject of the contract, examined by an attorney of the purchaser's own selection; or be furnished with or obtain a policy of title insurance; or

(22) Conduct which constitutes dishonest dealings, bad faith, untrustworthiness or incompetency; or

(23) Disregarding or violating any provision of this Act; or

(24) Failing within a reasonable time to deposit moneys, received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this State, or in a custodial, trust, or escrow account maintained for such purpose in a banking institution authorized to do business in this State; or

(25) Disbursing moneys deposited in a custodial, trust, or escrow account, in accordance with Subsection (24) above, before the transaction concerned has been consummated or finally terminated otherwise; or

(26) Failing or refusing upon demand to produce any document, book,

or record in his possession concerning any real estate transaction transacted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(27) Failing without just cause to surrender unto the rightful owner, upon demand, any document or instrument coming into his possession.

(d) A final money judgment has been rendered against such licensee resulting from contractual obligations of a licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six (6) months after becoming final.

This Section of this Act shall not be construed to relieve any person or company from civil liability or from criminal prosecution under this Act or under the laws of this State.

Upon complaint by affidavit of any credible person that any licensee under the provisions of this Act has been guilty of, or has committed any of the acts mentioned in this Section, the Commission shall, after proper investigation and verification of information contained in the complaint, notify the licensee of the filing of such complaint and the date a hearing will be had thereon. After hearing, the Commission shall enter such order as to it appears proper under the facts presented. Either party may appeal from that decision to any District Court of the County where such licensee resides, where a trial shall be had in accordance with the Texas Rules of Civil Procedure.

#### Unlawful Practice of Law

Sec. 17. Any license granted under the provisions of this Act shall be cancelled by the Commission upon proof that the licensee, not being licensed and authorized to practice law in this State, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relations, as licensee, draws any deed, note, deed of trust, or will, or any other written instrument that may transfer or anywise affect the title or interest in land, or advises or counsels any person as to the validity or legal sufficiency of any such instrument above mentioned, or as to the validity of title of real estate.

#### Hearings

Sec. 18. The Commission shall, before suspending or revoking any license, notify the licensee in writing of any charges made in order to afford such licensee an opportunity to be heard, which notification shall be given at least ten (10) days prior to the date set for the hearing. The Commission shall prescribe the time and place of the hearing. The Commission shall have no authority to promulgate rules or regulations which are not definitely set forth in this Act. Such written notice may be served by mailing same by registered mail to the last known business address of such li-

censee. If such licensee be a Salesman, the Commission shall also notify the Real Estate Broker employing him, specifying the charges made against such Real Estate Salesman by sending a notice thereof by registered mail to the Real Estate Broker's last known address. At such hearing, or at any other provided for in this Act, such licensee, any and all persons complaining against him, as well as any other witness whose testimony is relied upon to substantiate the charges made, shall be entitled to be present. He shall also be entitled to present evidence, oral and written, as he may see fit, and as may be pertinent to the inquiry. The said hearing may be held by the Commission, and the said hearing shall be held, if the applicant or licensee so desires, within the county where the applicant or licensee has his principal place of business. In such hearing all witnesses shall be duly sworn by the person herein authorized to preside, and stenographic notes of the proceedings shall be taken and filed as part of the records in the case. Any party to the proceedings desiring it shall be furnished with a copy of the stenographic notes upon the payment to the Commission of a fee not to exceed Fifty Cents (50¢) per page.

#### License Prerequisite to Suit for Compensation

Sec. 19. No person or company may bring or maintain any action for the collection of compensation for the performance in this State of any of the acts set out in subdivision (1) of Section 4 hereof without alleging and proving that the person or company performing the brokerage services was a duly licensed real estate broker or salesman at the time the alleged services were commenced; or was a duly licensed attorney-at-law as exempt from the provisions of this Act by Section 6.

#### Witnesses and Evidence

Sec. 20. (a) The Commission may require by subpoena or summons issued by the Commission, or any person duly authorized to act for the Commission, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence (except such books of account as are necessary to the continued conduct of the business, which books the Commission shall have the right to examine or cause to be examined at the office of the concern, and to require copies of such portion thereof as may be deemed necessary) touching such matter in question under this Act, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 25 hereof, relating to any matter which the Commission has authority by this Act to consider or investigate; and for this purpose the Commission, or any person duly authorized by the Commission may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or of the contumacy of any witness appearing before the Commission, the

Commission or the person duly authorized to act for it may invoke the aid of the District Court within whose jurisdiction any witness may be found and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) The Commission, or any person duly authorized by the Commission, may in any investigation cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed for depositions in civil actions under the laws of Texas. Each witness required to attend any hearing provided for in this Act shall receive for each day's attendance the sum of Seven (\$7.00) Dollars and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payments of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act, as hereinbefore provided. The fee for serving the subpoena shall be the same as that paid the sheriff for similar services. The fees, expenses, and costs incurred at or in connection with any hearing may be imposed by the Commission upon any party to the record or may be divided between any and all parties to the record in such proportions as the Commission may determine.

#### Judicial Review

Sec. 21. (a) Any real estate broker, or real estate salesman, or any person having a justiciable interest, who is aggrieved by any decision of the Commission may file within thirty (30) days thereafter in the District Court of the county in which he resides, or in the District Court in the county where his principal place of business is situated, a petition against the Commission officially as defendant, alleging therein in brief detail the action and decision complained of and for an order directing the Commission to license or reinstate the applicant. The case shall be tried in accordance with the Texas Rules of Civil Procedure.

(b) The District Courts may, upon application of either party and upon due notice given, advance the case on the docket. From the decision of the District Court, an appeal may be taken to the Court of Civil Appeals by either party, as in other cases, and no bond shall be required of the Commission. A judgment in favor of the defendant shall not bar after one year a new application by the plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent the Commission from thereafter revoking or refusing the license of such person for any proper cause which may there-

after accrue or be discovered. The court shall have full power to dispose of all costs.

#### Fees

Sec. 22. The commission shall charge and collect the following fees:

(a) A fee not to exceed Twenty Dollars (\$20.00) for the filing of any original application for real estate broker licensure.

(b) A fee not to exceed Twenty Dollars (\$20.00) for the filing of any real estate broker license renewal application.

(c) A fee of Ten Dollars (\$10.00) for the filing of an original application for real estate salesman licensure.

(d) A fee of Ten Dollars (\$10.00) for the filing of any real estate salesman license renewal application.

(e) A fee of Three Dollars (\$3.00) for a license for each additional office or place of business.

(f) A fee of Three Dollars (\$3.00) for a license for a change of place of business or change of employer.

(g) A fee of Three Dollars (\$3.00) to replace a license lost or destroyed.

(h) A fee of Two Hundred Dollars (\$200.00) for the filing of an original application for approval of a real estate brokerage course to be conducted by a privately owned school (other than an accredited institution of higher learning) pursuant to provisions of Section 10 of this Act.

(i) A fee of One Hundred Dollars (\$100.00) per annum for inspecting and renewing approval of a privately owned school (other than an accredited institution of higher learning) conducting real estate courses approved by the commission.

#### Expiration and Renewal

Sec. 23. All licenses issued under provisions of this Act shall expire at midnight on December 31st of the calendar year for which they are issued, unless previously revoked, suspended, or invalidated, and application for renewal thereof shall be made in such manner as the Commission shall prescribe. Applications for renewal of said license shall be made between the 1st day of September and the 1st day of December. Provided, however, that no applicant who has held a license during the preceding year before making application under The Real Estate License Act of Texas shall be required to take an examination unless such license was suspended, revoked, or cancelled for violation of this Act.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 23A. The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for making application for license renewal shall be adjusted accordingly. For the year in which the

expiration date is changed, license fees payable on December 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

#### Custody and Disposition of Funds

Sec. 24. (a) Ten Dollars (\$10.00) received by the commission for the filing of broker license renewal applications and Five Dollars (\$5.00) received by the commission for the filing of real estate salesman license renewal applications shall be transmitted to Texas A & M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Real Estate Research Center and for carrying out the purposes, objectives, and duties of the Center.

(b) Except as provided in Subsection (a) of this section all moneys derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for the use of the commission in the administration of the Act upon requisition of the commission. So much of such moneys so paid into the State Treasury as is necessary is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the commission may occupy, and necessary traveling expenses for the commission or persons authorized to act for it when performing duties hereunder at the request of the commission. At the end of the State fiscal year, any unused portion of said funds in said special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be set over and paid into the General Revenue Fund. The Comptroller shall, upon requisition of the commission, from time to time draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making any requisition; provided, however, that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the General Departmental Appropriation Bill for the Texas Real Estate Commission, and not otherwise.

#### Admissibility of Certified Documents in Evidence

Sec. 25. Copies of all papers, instruments, or documents filed in the office of the Commission certified by the Administrator or the

Chairman of the Commission under the seal of the State of Texas, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in cases where the original would be admitted in evidence; provided that the court may, for cause shown, require the production of the originals. In any prosecution, action, suit or proceeding before any of the several courts of this State, based upon or arising out of or under the provisions of this Act, a certificate under the seal of the State duly signed by the Commission showing compliance or non-compliance with the provisions of this Act by any Real Estate Broker or Salesman shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

#### Unlawful Commission

Sec. 26. It shall be unlawful for any Real Estate Broker or Real Estate Salesman to offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of his commission or compensation arising or accruing from any real estate transaction, to any person who is not licensed in this or another State as a Broker or Salesman, in consideration of service as a Real Estate Broker or Salesman performed or to be performed by such unlicensed person, and no Real Estate Salesman shall be employed by or accept compensation from any person other than the Broker under whom he is at the time licensed; and it shall be unlawful for any licensed Real Estate Salesman to pay a commission to any person except through the Broker under whom he is at the time licensed.

#### Offense Defined and Injunction Authorized

Sec. 27. (a) Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any land or subdivision offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any land or subdivision contains any written statement that is false or fraudulent, issues, circulates, publishes, or distributes the same, or who shall cause the same to be issued, circulated, published, or distributed, or who, while acting as a Real Estate Broker or Salesman, commingles any funds deposited with him in escrow or in trust or who deposits such funds in any bank in any account which contains funds other than those so deposited with him in escrow or in trust, and any person who, in any respect, wilfully violates or fails to comply with any provisions of this Act, or who in any respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand, or requirement of the Commission authorized by this Act shall be guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not more than Five Hundred

(\$500.00) Dollars, or to imprisonment in the county jail for not more than one (1) year, or to both such fine and imprisonment.

(b) Whenever in the judgment of the Commission any person has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of any provision of this Act, the County Attorney or District Attorney, in the county wherein such violation has occurred or is about to occur, or in the county of the defendant's residence, or the Attorney General, may maintain an action in the name of the State of Texas in the District Court of such county to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with this Act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

#### Contract for Commissions

Sec. 28. No action shall be brought in any court in this State for the recovery of any commission for the sale or purchase of real estate unless the promise or agreement upon which action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunder lawfully authorized.

At the time of the execution of any contract of sale of any real estate in this State, the Real Estate Salesman, Real Estate Broker, Real Estate Agent or Realtor shall advise the purchaser or purchasers, in writing, that such purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that such purchaser or purchasers should be furnished with or obtain a policy of title insurance; and provided further, that failure to so advise as hereinabove set out shall preclude the payment of or recovery of any commission agreed to be paid on such sale.

[Acts 1939, 46th Leg., p. 560; Acts 1949, 51st Leg., p. 304, ch. 149, § 1; Acts 1955, 54th Leg., p. 986, ch. 383, § 1; Acts 1959, 56th Leg., p. 872, ch. 397, § 1; Acts 1963, 58th Leg., p. 850, ch. 325, §§ 1 to 5, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 598, ch. 272, §§ 1 to 5, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1142, ch. 256, §§ 6, 7; Acts 1973, 63rd Leg., p. 629, ch. 266, § 25, eff. June 11, 1973.]

Acts 1971, 62nd Leg., p. 1140, ch. 256, which by sections 6 and 7 amended sections 22 and 24 of this article, respectively, established a Real Estate Research Center at Texas A & M University by sections 1 to 5, which were codified by Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, as Education Code §§ 86.51 to 86.55.

Sections 8 and 9 of Acts 1971, 62nd Leg., p. 1140, ch. 256, provided:

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

"Sec. 9. All laws and parts of laws in conflict or inconsistent with this Act are hereby repealed."

**Art. 6573b. Penalty for Violation of Act**

Any person who shall wilfully violate or fail to comply with any of the provisions of The Real Estate License Act of Texas or any order of The Texas Real Estate Commission authorized by The Real Estate License Act shall be

guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not more than Five Hundred Dollars (\$500), or to imprisonment in the county jail for not more than one year, or to both such fine and imprisonment.

[Acts 1963, 58th Leg., p. 850, ch. 325, § 6.]

# TITLE 114

## RECORDS

### 1. RECORDS

#### Article

- 6574. Old Records Transcribed.
- 6574a. Old Probate Records.
- 6574b. Photographic Duplication of Public Records; Disposition of Original Records.
- 6575. Correctness Certified to.
- 6576. Records of County Surveyor.
- 6577. Original Books Preserved.
- 6578. Records of New County Transcribed.
- 6579. Pay for Making Transcript.
- 6580. Translation.
- 6581. Effect of Such Translations.
- 6581a. Destruction of Beer Licenses and Related Papers.

### 2. LOST RECORDS, ETC.

- 6582. Lost Records Supplied by Proof.
- 6583. Proceedings to Establish Lost Records.
- 6584. Judgment.
- 6585. Proceedings in the County Court.
- 6586. Effect of Judgment.
- 6587. Certified Copies May be Recorded.
- 6588. Originals Recorded Again.
- 6589. Force of Substituted Judgment.
- 6590. Copies of Records.

### 1. RECORDS

#### Art. 6574. Old Records Transcribed

When any of the records or indexes of a county become defaced, worn or in a condition endangering their preservation in a safe and legible form, the commissioners court of such county shall procure necessary, well bound books and require the officer having the custody thereof, to transcribe such records into such new books so as to perfectly conform to the original record as indexed. The designation of such new records, whether by letter or number, shall not be changed from the original. Such transcribed records shall be carefully compared with the originals by the officer who transcribes them, assisted by a sworn deputy. [Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6574a. Old Probate Records

The commissioners' court of any county in this State may require the county clerk to record in a well bound book any old probate records or papers that are unrecorded when in the opinion of the commissioners' court such recording is necessary. The commissioners'

court shall fix the compensation of the county clerk before the work is done at any amount not to exceed fifteen (15¢) cents per one hundred words for recording such records or papers, to be paid out of the General fund of the county.

[Acts 1925, 39th Leg., p. 373, ch. 162, § 1.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6574b. Photographic Duplication of Public Records; Disposition of Original Records

##### Photographic Duplication When Necessary

Sec. 1. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may, at its discretion, order, authorize and provide for the duplication of all public records by photostatic, photographic, miniature photographic, film microfilm or micro-photographic process which correctly and legibly copies and reproduces, or which forms a medium of copying or reproducing, such public records, when, in the judgment of a Commissioners Court, or of the governing body of any political subdivision of Texas, a necessity exists for the photographic duplication of said public records for the purpose of recording, preserving and protecting same, or for the purpose of reducing space required for filing, storing and safekeeping of same, or for any similar purpose.

##### Quality of Materials

Sec. 2. All materials used in the photographic duplication of public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates, shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

##### Control and Direction; Approval

Sec. 3. The duplication of all public records, if ordered, authorized and provided for, as hereinabove provided, shall be under the control and direction of the officer who is responsible for the safekeeping and preservation of such public records, and all duplication of such public records shall be checked, approved and certified by such officer as to being

correct and legible copies of the original records in his office.

**Filing of Duplicates; Destruction of Original Records**

Sec. 4. Said photographic duplicates of all public records shall be placed in conveniently accessible files and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting and enlarging the same whenever requested during regular office hours. Whenever photographic duplicates of public records are so made, certified and placed, the original public records may be, by order of the Commissioners Court of the county, or of the governing body of any political subdivision of Texas, destroyed or otherwise disposed of, provided, however, that no original record shall be destroyed or otherwise disposed of unless or until the time for filing legal proceedings based on any such record shall have elapsed, and, in no event, shall any original public record be destroyed or otherwise disposed of until said public record is at least five (5) years old; and provided further, that notice of such proposed destruction or disposition of original public records shall first be given to the State Librarian, and if such records are, in his opinion, needed for the Texas State Library, they shall be transferred thereto in the manner provided in Article 5439, Revised Civil Statutes, 1925.

**Destruction of Certain Records Not Authorized**

Sec. 5. Nothing in this Act shall authorize the destruction or disposition of any deed record, deed of trust record, mechanic's lien record or any minute book of any Court or any minute book of any political subdivision of Texas.

**Compensation to Officer Checking Correctness**

Sec. 6. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may pay a reasonable compensation to the officer whose duty it is to check, approve and certify to the correctness of the photographic duplication of the public records of his office when said duplication is completed or as same is being done; provided, however, that such compensation shall be reported as fees of office and accounted for as provided by law.

**Duplicates Deemed Original Records; Transcript**

Sec. 7. Said photographic duplicates of public records shall be deemed to be an original record for all purposes, including introduction in all Courts or administrative agencies. A transcript, exemplification, or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

**Repeal of Conflicting Laws**

Sec. 8. All laws or parts of laws in conflict herewith are hereby repealed.

**Partial Invalidity**

Sec. 9. If any part, section, clause, phrase or word of this Act shall be held to be unconstitutional or invalid, it is declared to be the legislative intent that such invalidity shall not invalidate, impair or affect the remaining portions of this Act, and that the remaining portions of this Act be and the same are enacted regardless of the invalidity of any part of this Act.

[Acts 1947, 50th Leg., p. 84, ch. 58, § 1.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6575. Correctness Certified to**

When such records have been correctly transcribed, the officer with his deputies who transcribed and verified them, shall officially certify at the conclusion of the record to the correctness of the same with the impress of the seal of said court affixed on the same page, stating the number of pages contained in the book from one to the highest number.

[Acts 1925, S.B. 84.]

**Art. 6576. Records of County Surveyor**

Where the records of the county surveyor's office have been so transcribed, the surveyor shall certify the correctness of such transcribed records and make affidavit thereto before the county clerk of his county who shall impress thereon the seal of the county court.

[Acts 1925, S.B. 84.]

**Art. 6577. Original Books Preserved**

The original books transcribed according to the provisions of this title shall be carefully kept and preserved by such clerk, as other archives of his office.

[Acts 1925, S.B. 84.]

**Art. 6578. Records of New County Transcribed**

The commissioners court of a county which has been created, either in whole or in part from the territory of another county or counties, or to which may have been added since its creation, the territory of another county or counties, shall require the county clerk to transcribe from the record of said other county or counties in substantial well bound record books to be furnished him by the commissioners court, each deed mortgage, conveyance, incumbrance and muniment of title affecting or in anywise relating to all lands and real property embraced in the territory so acquired from such other county or counties, which deeds, mortgages, conveyances, incumbrances and mu-

niments of title appear of record in the county or counties from which said territory may have been taken. When the territory acquired was from more than one county, then the clerk shall use a separate book for each county, and such records shall be indexed and arranged as is provided by law. Said records shall be legibly transcribed, and when so transcribed shall be carefully compared with the original record by the said clerk or his deputies who transcribed them. When said record or records have been correctly transcribed, the county clerk and his deputies who transcribed and verified them, shall certify the correctness of such records under their official oath of office at the conclusion thereof with the impress of the seal of said court affixed on the same page.

[Acts 1925, S.B. 84.]

#### Art. 6579. Pay for Making Transcript

The county clerk or person making such transcript shall receive not exceeding fifteen cents per hundred words for transcribing, comparing and verifying said records, the amount to be fixed by the commissioners court in the order directing the transcribing of such records; said compensation to be paid out of the county treasury upon warrant issued under the order of the commissioners court of the newly created county.

[Acts 1925, S.B. 84.]

#### Art. 6580. Translation

Any commissioners court may require the county clerk of its county to have translated into English all or any part of the archives and records of their offices which are in Spanish and which relate to titles to land, and copy said translations in a well bound book or books, but they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording.

[Acts 1925, S.B. 84.]

#### Art. 6581. Effect of Such Translations

When such Spanish archives and records are translated and recorded, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be permanent archives and records of the county clerk's office of the counties when so translated and recorded.

[Acts 1925, S.B. 84.]

#### Art. 6581a. Destruction of Beer Licenses and Related Papers

In all counties having a population of eight hundred thousand (800,000) or more, according to the last preceding Federal Census, the County Clerk, and the Assessor and Collector of Taxes are hereby authorized and directed to de-

stroy all applications for beer licenses, office copies of notices issued on such applications, and copies of such beer licenses on file in their respective offices at any time after the expiration of one (1) year from the expiration date of such license. Docket sheets kept by the County Clerk showing the name of the owner, name of the business, the address where operated, the class of license applied for, and other information shall be retained by the County Clerk as a public record.

[Acts 1951, 52nd Leg., p. 377, ch. 241, § 1.]

## 2. LOST RECORDS, ETC.

#### Art. 6582. Lost Records Supplied by Proof

All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, which have been lost or destroyed, and all judgments of courts of record in this State, where the record of the court containing such judgment has been lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 6583. Proceedings to Establish Lost Records

Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away, may, in addition to any mode provided by law for establishing the existence and contents of such record, file with the district clerk of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument, or to the party or parties who were or may be interested adversely to the applicant at the time of the rendition of any such judgment, or the heirs and legal representatives of such parties to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases.

[Acts 1925, S.B. 84.]

#### Art. 6584. Judgment

On hearing said application, if the court shall be satisfied from the evidence of the previous existence of such deed, instrument, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writ-

ing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county.

[Acts 1925, S.B. 84.]

#### Art. 6585. Proceedings in the County Court

Whenever any judgment, order or decree duly entered in the county court of any county has been or may be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles.

[Acts 1925, S.B. 84.]

#### Art. 6586. Effect of Judgment

Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used as evidence in any court of this State with like effect as the original thereof.

[Acts 1925, S.B. 84.]

#### Art. 6587. Certified Copies May be Recorded.

All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be

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recorded in such county; provided, the loss of the original shall first be established.

[Acts 1925, S.B. 84.]

#### Art. 6588. Originals Recorded Again

When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records.

[Acts 1925, S.B. 84.]

#### Art. 6589. Force of Substituted Judgment

Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals.

[Acts 1925, S.B. 84.]

#### Art. 6590. Copies of Records

All transcribed records and all translations of Spanish archives, and all judgments supplying lost records or other instruments in writing, and all re-recorded deeds or other instruments in writing required by law to be recorded, when made and recorded in accordance with the provisions of this title and certified copies of such instruments shall have the same force and effect as the original record thereof.

[Acts 1925, S.B. 84.]

# TITLE 115

## REGISTRATION

Chapter	Article
1. Recorders and Their Duties	6591
2. Acknowledgments and Proof for Record	6602
3. Effect of Recording	6624
4. Separate Property of Married Women	6647
5. General Provisions	6652

### CHAPTER ONE. RECORDERS AND THEIR DUTIES

Article
6591. Recorders.
6592. Seal.
6593. Record Books.
6594. Memorandum and Receipt.
6595. Shall Record Without Delay.
6596. Considered Recorded When Deposited.
6597. Alphabetical Indexes.
6598. What They Shall Contain.
6599. Index of Other Records.
6600. Shall Give Attested Copies.
6601. Mortgages, etc.

#### Art. 6591. Recorders

County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 19'1(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6592. Seal

The seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts.

[Acts 1925, S.B. 84.]

#### Art. 6593. Record Books

Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audited by the commissioners court and paid out of the county treasury.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 19'1(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6594. Memorandum and Receipt

When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 19'1(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6595. Shall Record Without Delay

Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 19'1(a), provided in section 2 that all laws or parts of laws in conflict with the*

*provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6596. Considered Recorded When Deposited

Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6597. Alphabetical Indexes

Each county clerk shall keep in alphabetical order a well bound index to all books of records wherein deeds, powers of attorney, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6598. What They Shall Contain

It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case a deed is made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents; and, if by a commissioner or trustee, the name of such commissioner or trustee and the person whose estate is conveyed.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified*

*as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6599. Index of Other Records

Each shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing relating to goods and chattels, or movable property of any description, marriage contracts, and all other instruments of writing authorized or required to be recorded in his office are recorded; and in a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6600. Shall Give Attested Copies

The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law.

[Acts 1925, S.B. 84.]

#### Art. 6601. Mortgages, etc.

All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

### CHAPTER TWO. ACKNOWLEDGMENTS AND PROOF FOR RECORD

#### Article

6602. Persons Before Whom Acknowledgments or Proof Made; Members of Armed Forces; Presumption; Absence of Seal.  
6602a. Stockholders as Notaries.  
6603. Acknowledgment, How Made.

- Article
- 04. Party Must be Known or Proven.
- 05. Repealed.
- 06. Certificate of Officer.
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- 08. Repealed.
- 09. Proof by Witness.
- 10. Witness Must be Personally Known.
- 11. Form of Certificate.
- 12. Handwriting May Be Proved, When.
- 13. Evidence Must Prove What.
- 14. When Grantor Made His Mark.
- 15. Proofs How Made and Certified.
- 16. Officers' Authority.
- 17. Subpoena to Witness.
- 18. May Compel Attendance of Witness.
- 19. Record of Acknowledgment.
- 20. Contents of Statement.
- 21. Shall Further Recite.
- 22. The Book a Public Record.
- 23. Action for Damages.

**Art. 6602. Persons Before Whom Acknowledgments or Proof Made; Members of Armed Forces; Presumption; Absence of Seal**

1. The acknowledgment or proof of an instrument of writing for record may be made within this state before:
  - a. A Clerk of the District Court.
  - b. A Judge or Clerk of the County Court.
  - c. A Notary Public.
2. The acknowledgment or proof of such instrument may be made without this state, but within the physical limits of the United States of America or its territories before:
  - a. A Clerk of some court of record having a seal.
  - b. A Commissioner of Deeds duly appointed under the laws of this state.
  - c. A Notary Public.
3. The acknowledgment or proof of such instrument may be made without the physical limits of the United States and its territories before:
  - a. A Minister, a Commissioner or Charge D'affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made.
  - b. A Consul-General, Consul, Vice-Consul, Commercial Agent, Vice-Commercial Agent, Deputy Consul or Consular Agent of the United States, resident in the country where proof of acknowledgment is made.
  - c. A Notary Public.
4. In addition to the methods above provided, the acknowledgment or proof of an instrument of writing for record may be made by a member of the Armed Forces of the United States or any auxiliary thereto, or by the husband or wife of a member of the Armed Forces of the United States or any auxiliary thereto, before any Commissioned Officer in the Armed Forces of the United States of America or the auxiliaries thereto.

In the absence of pleading and proof to the contrary, it shall be presumed when any such acknowledgment is offered in evidence that the person signing such as a Commissioned Officer was such on the date signed, and that the person whose acknowledgment he took was one of those with respect to whom such action is hereby authorized.

No certificate of acknowledgment or proof of instrument taken in accordance with the provisions of this Subsection 4 of this Article shall be held invalid by reason of the failure of the officer certifying to such acknowledgment or proof of instrument to attach an official seal thereto.

[Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 49, ch. 45, § 1; Acts 1945, 49th Leg., p. 542, ch. 328, § 1; Acts 1955, 54th Leg., p. 672, ch. 241, § 1.]

**Art. 6602a. Stockholders as Notaries**

No notary public or other public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing, in which a corporation is interested, by reason of his stock ownership or employment by such corporation interested in such instrument, provided such stockholder owns not more than  $\frac{1}{10}$  of one percent of the issued and outstanding stock of the corporation and provided further that such corporation has more than 1,000 shareholders; and any such acknowledgment heretofore taken is hereby validated.

[Acts 1971, 62nd Leg., p. 1953, ch. 594, eff. June 2, 1971.]

**Art. 6603. Acknowledgment, How Made**

The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office.

[Acts 1925, S.B. 84.]

**Art. 6604. Party Must be Known or Proven**

No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument.

[Acts 1925, S.B. 84.]

**Art. 6605. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968**

**Art. 6606. Certificate of Officer**

An officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by

him and given under his seal of office, substantially in form as hereinafter prescribed. [Acts 1925, S.B. 84.]

#### Art. 6607. Form of Certificate

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of \_\_\_\_\_,

"County of \_\_\_\_\_,

"Before me \_\_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_."

[Acts 1925, S.B. 84.]

#### Art. 6608. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968

#### Art. 6609. Proof by Witness

The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument of writing subscribe the same or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated; and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal.

[Acts 1925, S.B. 84.]

#### Art. 6610. Witness Must Be Personally Known

The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate.

[Acts 1925, S.B. 84.]

#### Art. 6611. Form of Certificate

The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

"The State of \_\_\_\_\_,

"County of \_\_\_\_\_.

"Before me, \_\_\_\_\_ (here insert the name and character of the officer), on this day per-

sonally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw \_\_\_\_\_, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_."

[Acts 1925, S.B. 84.]

#### Art. 6612. Handwriting May Be Proved, When

The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this State.
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained.
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are dead or are non-residents of this State, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

[Acts 1925, S.B. 84.]

#### Art. 6613. Evidence Must Prove What

The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness testifying.

[Acts 1925, S.B. 84.]

**Art. 6614. When Grantor Made His Mark**

When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in Article 6612 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying.

[Acts 1925, S.B. 84.]

**Art. 6615. Proofs How Made and Certified**

The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificates shall be attached to such instrument.

[Acts 1925, S.B. 84.]

**Art. 6616. Officers' Authority**

Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpoenas.
4. To punish for contempt as hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 6617. Subpoena to Witness**

Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such instrument.

[Acts 1925, S.B. 84.]

**Art. 6618. May Compel Attendance of Witness**

When a witness shall fail to obey a subpoena, said officer shall have the same power to enforce his attendance and to compel his answers as a judge of the district court has to compel the attendance and answers of witnesses; but no attachment shall issue unless the same compensation is made or tendered to each witness as is allowed to witness in other cases; and no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

[Acts 1925, S.B. 84.]

**Art. 6619. Record of Acknowledgment**

All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale or any other written instrument required or permitted by law to be placed on record shall procure a well bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially.

[Acts 1925, S.B. 84.]

**Art. 6620. Contents of Statement**

Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person.

[Acts 1925, S.B. 84.]

**Art. 6621. Shall Further Recite**

Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated.

[Acts 1925, S.B. 84.]

**Art. 6622. The Book a Public Record**

The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times.

[Acts 1925, S.B. 84.]

**Art. 6623. Action for Damages**

Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal.

[Acts 1925, S.B. 84.]

**CHAPTER THREE. EFFECT OF RECORDING****Article**

6624. Patents and Grants.  
6625. Copies of Archives.  
6625a. Recording Foreign Deeds, etc.

## Article

6626. What May Be Recorded.  
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**Art. 6624. Patents and Grants**

Letters patent from the State of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded, without further acknowledgment or proof.

[Acts 1925, S.B. 84.]

**Art. 6625. Copies of Archives**

Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies.

[Acts 1925, S.B. 84.]

**Art. 6625a. Recording Foreign Deeds, etc.**

Copies of all deeds, transfers, or any other written evidence of title to land which have been filed without the State of Texas or without the county in which such lands are located, and which were executed and recorded in conformity with the laws governing such recording, when duly certified by the officials having lawful custody thereof, shall be admitted to record in the county where such land lies.

[Acts 1939, 46th Leg., p. 578, § 1.]

**Art. 6626. What May Be Recorded**

The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any

lands or tenements, or goods and chattels, or moveable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of the partition or other subdivision through a court of record; provided that where the real estate is situated within the corporate limits or within five miles of the corporate limits of any incorporated city or town, the governing body thereof or the city planning commission, as the case may be, as provided in Article 974a, Vernon's Texas Civil Statutes, shall perform the duties hereinabove imposed upon the Commissioners Court.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 371, ch. 217, § 1; Acts 1951, 52nd Leg., p. 745, ch. 403, § 1.]

**Art. 6626a. Subdivision Plats; Recording; Counties of Less Than 190,000 Population; Powers of Commissioners Court**

Sec. 1. Hereafter, in all counties having a population of less than one hundred ninety thousand (190,000) according to the last preceding Federal Census, every owner of any tract of land situated without the corporate limits of any city in the State of Texas, who may hereafter divide the same in two (2) or more parts for the purpose of laying out any subdivision of any such tract of land, or an addition without the corporate limits of any town or city, or for laying out suburban lots or building lots, and for the purpose of laying out streets, alleys, or parks, or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof, which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions thereof of said subdivision or addition and the dimensions of all lots, streets, alleys, parks, or other portions of same, intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, provided, however, that no plat of any subdivision of any tract of land or any addition shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

Sec. 2. That every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for acknowledgment of deeds; and the said

plat, subject to the provisions contained in this Act, shall be filed for record and be recorded in the office of the County Clerk of the County in which the land lies.

Sec. 3. The Commissioners Courts of any such counties may, by an order duly adopted and entered upon the minutes of the Court, after a notice published in a newspaper of general circulation in the county, be specifically authorized to make the following requirements:

(a) To provide for right of way on main artery streets or roads within such subdivision of a width of not less than fifty (50) feet nor more than one hundred (100) feet.

(b) To provide for right of way on all other streets or roads in such subdivision of not less than forty (40) feet nor more than fifty (50) feet.

(c) To provide that the street cut on main arteries within the right of way be not less than thirty (30) feet nor more than forty-five (45) feet.

(d) To provide for the street cut on all other streets or roads within such subdivision within the right of way to be not less than twenty-five (25) feet nor more than thirty-five (35) feet.

(e) To promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivision, considering the amount and kind of travel over said streets.

(f) To promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in said subdivision or addition.

(g) To require the owner or owners of any such tract of land, which may be so subdivided, to give a good and sufficient bond for the proper construction of such roads or streets affected, with such sureties as may be approved by the Court; and in the event a surety bond by a corporate surety is required, such bond shall be executed by a surety company authorized to do business in the State of Texas. Such bond shall be made payable to the County Judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the Commissioners Court of such county. The bond shall be in such an amount as may be determined by the Commissioners Court, but shall not exceed a sum equal to Three Dollars (\$3) for each lineal foot of road or street within such subdivision.

Sec. 4. The Commissioners Court of any such county shall have the authority to refuse to approve and authorize any map or plat of

any such subdivision, unless such map or plat meets the requirements as set forth in this Act; and there is submitted at the time of approval of such map or plat such bond as may be required by this Act.

[Acts 1957, 55th Leg., p. 1302, ch. 436; Acts 1961, 57th Leg., p. 1022, ch. 449, § 1, eff. June 17, 1961.]

#### Art. 6626b. Recording of Master Forms of Mortgages and Deeds of Trust

Sec. 1. A master form of a mortgage or of a deed of trust may be recorded in the office of the county clerk of any county. Such master form of a mortgage need not be acknowledged or proved to be entitled to be recorded. Every such instrument shall be designated on the face thereof as a "master form recorded by (name of person causing the instrument to be recorded)." Every such instrument shall be indexed under the name of the person causing it to be recorded, and the indices and records thereof shall indicate that these documents are master mortgages.

Sec. 2. Any or all of the provisions of such a master form recorded in accordance herewith may be incorporated by reference in any instrument by reference therein to any or all of such provisions without setting them forth in full. Such later references shall state that the master form of a mortgage was recorded in the county in which the subsequent instrument is offered for record, the book or volume and the first page of the records at which such form of master mortgage was recorded, and a statement by paragraph numbers or any other method which will definitely identify the same, of the specific provisions of any such form of master mortgage that are being so adopted and included in such subsequent instrument.

Sec. 3. Provisions so incorporated by reference shall be of the same force and effect, shall be as binding upon, and shall give constructive notice to, the parties to the subsequent incorporating instrument and to their successors in title, as though they were written in full in such incorporating instruments. A copy of the master form so incorporated by reference shall be furnished to the grantor of the mortgage or deed of trust upon execution of the same. A statement that a copy of the master form was received by the grantor, when recited in the mortgage or deed of trust, or in a separate instrument signed by the grantor, shall be deemed conclusive of such receipt. The mortgagee shall also furnish without charge a copy of the master form to the mortgagor or any successor in interest to the mortgagor or their authorized representative upon written request therefor after the same has been executed.

Sec. 4. The provisions of this Act shall not apply to nor modify any provision of the Uniform Commercial Code.

[Acts 1973, 63rd Leg., p. 344, ch. 144, eff. Aug. 27, 1973.]

**Art. 6626c. Recording Maps or Plats of Subdivisions of Real Estate**

Sec. 1. No party shall file for record or have recorded in the official records in the County Clerk's office any map or plat of a subdivision or resubdivision of real estate without first securing approval therefor as may be provided by law, and no party so subdividing or resubdividing any real estate shall use the subdivision's or resubdivision's description in any deed of conveyance or contract of sale delivered to a purchaser unless and until the map and plat of such subdivision or resubdivision shall have been duly authorized as aforesaid and such map and plat thereof has actually been filed for record with the Clerk of the County Court of the county in which the real estate is situated.

Sec. 2. Any party violating any provision of Section 1 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), or confined in the county jail not exceeding ninety (90) days, or both such fine and imprisonment, and each act of violation shall constitute a separate offense, and in addition to the above penalties any violation of the provisions of Section 1 of this Act shall constitute prima facie evidence of an attempt to defraud.

[Acts 1931, 42nd Leg., p. 266, ch. 160.]

**Art. 6627. When Sales, etc., to be Void Unless Registered**

All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding.

[Acts 1925, S.B. 84.]

**Art. 6628. Located Lands Have Priority**

Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the

existence of such elder title before he made such location or survey.

[Acts 1925, S.B. 84.]

**Art. 6629. English Language Used**

No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law.

[Acts 1925, S.B. 84.]

**Art. 6630. Deeds, etc., Recorded**

All deeds, conveyances, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that where such instruments grant security interests by a utility, as such term is defined in Section 35.01 of the Business & Commerce Code, they shall be filed in the place and manner described in Section 35.02 of the Business & Commerce Code.

All such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1035, ch. 400, § 8, eff. Jan. 1, 1974.]

**Art. 6631. Deed, etc., Valid Against Subsequent Creditors**

Every conveyance, covenant, agreement, deed, deed of trust or mortgage or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the State where the same has been regularly recorded, although the land may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only. All certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record. Nothing herein shall be construed to validate an invalid instrument.

[Acts 1925, S.B. 84.]

**Art. 6632. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

See, now, Family Code, §§ 5.03, 5.24(c).

**Art. 6633. Recorder Shall Record, etc.**

Each county clerk shall record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved and acknowledged according to law and delivered to him for record.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6634. Copies From Land Office**

County clerks shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that*

*all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6635. Judgments Recorded**

County clerks shall record all judgments and abstracts of judgments rendered by any court of this State presented to him for record when attested under the hand and seal of the clerk of the court where such judgment was obtained.

[Acts 1925, S.B. 84.]

**Repeal**

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6636. Transfers of Judgment**

The sale of a judgment, or any part thereof, of any court of record, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer, which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit. When thus filed, the clerk shall make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or if judgment be not rendered when transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof. For such service, he shall be entitled to a fee of Fifty Cents (50¢), to be paid by the party applying therefor. This Article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not.

[Acts 1925, S.B. 84; Acts 1955, 54th Leg., p. 591, ch. 199, § 1.]

**Repeal**

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified*

*as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6637. Judgment in Justice Courts

Whenever land is sold under execution or order of sale issuing out of a justice court, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; said transcript or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered.

[Acts 1925, S.B. 84.]

#### Art. 6638. Partition to be Recorded

Every partition of land made under an order or decree of a court, and every judgment or decree by which the title to land is recovered shall be duly recorded in the office of the county clerk in which such land may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof.

[Acts 1925, S.B. 84.]

#### Art. 6639. Decree May Be Abbreviated

It shall not be necessary to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be a sufficient record of such partition, judgment or decree.

[Acts 1925, S.B. 84.]

#### Art. 6640. Suit for Land; Notice to be Filed

Upon the filing of the plaintiff's statement or petition in any eminent domain proceeding, or during the pendency of any suit or action, involving the title to real estate, or seeking to establish any interest or right therein, or to enforce any lien, charge or encumbrance against the same, any party seeking affirmative relief therein, may file a notice of the pendency of such proceeding or suit with the

county clerk of each county where such real estate, or any part thereof, is situated. Such notice shall be signed by the party filing the same, his agent or attorney, setting forth the number, if any, and style of the cause, the court in which pending, the names of the party thereto, the kind of proceeding or suit and description of the land affected.

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 689, ch. 315, § 1.]

#### Art. 6641. Record of, How Made

The county clerk shall record such notice in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit, for which the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents.

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 689, ch. 315, § 1.]

#### Repeal

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6642. Transfers Without Notice, Valid

The pendency of such suit or action shall not prevent effective transfers or encumbrances of such real estate to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit as against a subsequent decree for the adverse party unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated.

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 689, ch. 315, § 1.]

#### Art. 6643. Effect of Notice

All such notices of pendency shall be notice to all the world of their contents and that the suit or suits mentioned therein are pending, and such notices shall operate as soon as filed with the county clerk for record, as provided in this Chapter whether service has been had on the parties to said suit or not.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 83, ch. 59, § 1.]

#### Art. 6643a. In Lieu of Lis Pendens

In any suit or action of which a notice of pendency thereof has been filed, and in which it shall appear to the court, upon motion made by any party to the suit or other person having an interest in the property affected by the ac-

tion or in the result of such suit or action, that adequate relief can be secured to the party plaintiff or defendant seeking such affirmative relief therein, by the deposit of money, or in the discretion of the court, by giving of an undertaking, the court may, at any stage of the proceeding, upon notice to all of the parties to the suit or action to be affected thereby, direct, by order made either in term time or in vacation, that the notice of the pendency thereof be cancelled upon the payment into court of the amount of the judgment sought to be recovered in such action, and such sum in addition thereto as the court may deem sufficient to cover interest likely to accrue during the pendency of the action, and costs.

In lieu thereof, the court may, in its discretion, order that an undertaking be given in a sum double the amount of the judgments sought to be recovered, with two sufficient sureties to be approved by the court, conditioned that the party or person applying therefor will pay the judgment or judgments sought to be enforced against said property, with interest and costs, in the event that a final judgment shall be entered in favor of the party to such suit filing such notice to the effect that such real estate was, at the time of the filing of such notice of pendency of action, legally and equitably therewith charged. A copy of such undertaking with notice of the filing of same shall be served upon the attorney for the party filing such notice of pendency of suit not less than two days prior to the submission of the same to the court for its approval. Upon the approval of such undertaking by the court, the court may direct that the notice of pendency of action or suit be cancelled of record in the manner above provided.

[Acts 1925, 39th Leg., p. 353, ch. 145, § 1.]

#### Art. 6644. Federal Lien Record

The county clerk of each county is authorized to, and shall either file, or file and record, as is or may be provided by the laws of the United States, every notice, abstract or statement of any lien or claim, or release or discharge thereof, in favor of the United States or of any department or bureau thereof, when any such notice, abstract or statement prepared in conformity to the laws of the United States, is presented to him for filing or filing and recording. The county clerk shall number such notices, abstracts or statements, in the order in which they are filed, and if they are required to be recorded, he shall record them in a well-bound book to be styled, "Federal Lien Record," and in either case he shall index them alphabetically under the names of the persons named therein or affected thereby, such index to be kept in a well-bound book styled, "Index to Federal Liens," and the county clerk shall charge a fee of One Dollar (\$1) for each instrument filed or recorded. His failure to file, record or index properly any such notice, abstract or statement as herein required, or to be compensated there-

for, shall not affect the validity or legality of any such lien or claim, or release or discharge thereof.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 12, ch. 7, § 1.]

#### Repeal

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 6644a. Certificates of Redemption

The county clerk of each county where the real property is located shall file, number, and index alphabetically, and record in the record where deeds and other conveyances of real property are recorded certificates of redemption or other documents issued by the United States or by any department or bureau thereof, in conformity with the laws of the United States, effecting or evidencing the redemption of real property from judicial sales or from non-judicial sales under foreclosure of liens, mortgages, or deeds of trust.

[Acts 1967, 60th Leg., p. 1228, ch. 557, § 1, eff. June 14, 1967.]

#### Art. 6645. Repealed by Acts 1973, 63rd Leg. p. 1035, ch. 400, § 7, eff. Jan. 1, 1974

#### Art. 6646. Record of a Grant, etc.

The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

[Acts 1925, S.B. 84.]

### CHAPTER FOUR. SEPARATE PROPERTY OF MARRIED WOMEN

#### Art. 6647. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Acts 1969, 61st Leg., p. 2706, ch. 888, repealing this article, enacts Title 1 of the Family Code.

#### Arts. 6648 to 6651. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968

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6657. Effect of Judgment.  
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**Art. 6652. Penalty for Failing to Record**

If any county clerk to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, has been delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on his official bond against such clerk and his sureties.

[Acts 1925, S.B. 84.]

**Art. 6653. Conveyances Governed by Then Existing Law**

The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

[Acts 1925, S.B. 84.]

**Art. 6654. Prior Records; Evidence**

All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

[Acts 1925, S.B. 84.]

**Art. 6655. May Correct Imperfect Certificate**

When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

[Acts 1925, S.B. 84.]

**Art. 6656. Judgment of Proof of Instrument**

Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

[Acts 1925, S.B. 84.]

**Art. 6657. Effect of Judgment**

A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record with like effect as if acknowledged.

[Acts 1925, S.B. 84.]

**Art. 6658. Land in Archer County**

Certified copies of deeds, mortgages, trust deeds, and all other instruments in any manner affecting titles to lands in Archer County which were recorded in Jack County from August 10, 1866 to August 10, 1870, made under the hand and seal of the County Clerk of Shackelford County, shall be admitted in evidence in all suits where secondary evidence is admissible.

[Acts 1925, S.B. 84.]

**Art. 6659. Record of Certain Titles Confirmed**

Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not.

[Acts 1925, S.B. 84.]

**Art. 6660. Shall be Evidence, When**

All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or

proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument, except after the ninth day of February, 1860, and in the future.

[Acts 1925, S.B. 84.]

#### Art. 6661. Old Registration Operative

Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made.

[Acts 1925, S.B. 84.]

#### Art. 6662. Attachments Recorded

Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the re-

turn of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. Each county clerk shall keep a well bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner.

[Acts 1925, S.B. 84.]

#### Repeal

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see italicized note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

# TITLE 116

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## 1. STATE HIGHWAY DEPARTMENT

**Art. 6663. Department**

The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. Said Department shall have its office at Austin where all its records shall be kept.

[Acts 1925, S.B. 84.]

**Art. 6663a. Photographic or Microphotographic Records; Authority of Highway Department and Public Safety Department to Make; Destruction of Original Records**

Sec. 1. The State Highway Department is hereby authorized to photograph, microphotograph, or film motor vehicle registration records, certificate of title records, highway planning survey records, accounting records including copies of labor and material payrolls, material shipping orders and supporting detail of quotations; and the Texas Department of Public Safety is hereby authorized to photograph, microphotograph, or film all records in connection with the issuance of operators' licenses, chauffeurs' licenses, and commercial operators' licenses and all records of the various divisions of the Texas Department of Public Safety, with the exception that no original fingerprint card or any evidence submitted in connection with a criminal case or any confession or statement made by the defendant in a criminal case shall be photographed or filmed for the purpose of disposing of the original records, and that whenever the State Highway Department or the Texas Department of Public Safety shall have photographed, microphotographed or filmed such records and whenever such photographs or microphotographs or films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the State Highway Department or the Texas Department of Public Safety may cause the original records from which the photographs, microphotographs or films have been made to be disposed of or destroyed.

Sec. 2. Photographs or microphotographs or films of any record photographed, microphotographed or filmed, as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. Duly certified or authenticated copies of such photographs or microphotographs or films shall be admitted in evidence equally with the original photographs or microphotographs or films.

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Sec. 2a. The State Highway Engineer, for the State Highway Department, and the Director of the Texas Department of Public Safety for the Texas Department of Public Safety, or their duly authorized representatives are hereby authorized to certify to the authenticity of any photograph or microphotograph herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is entitled to receive the same under the law.

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

[Acts 1945, 49th Leg., p. 57, c. 39; Acts 1965, 59th Leg., p. 192, ch. 77, § 1, eff. Aug. 30, 1965.]

**Art. 6664. Commission**

The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund.

[Acts 1925, S.B. 84.]

**Art. 6665. Organization**

The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection.

[Acts 1925, S.B. 84.]

**Art. 6666. Rules**

The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They

shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction. [Acts 1925, S.B. 84.]

#### Art. 6667. To Aid Road Officials

The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court.

[Acts 1925, S.B. 84.]

#### Art. 6668. Qualifications of Engineers

The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance.

[Acts 1925, S.B. 84.]

#### Art. 6669. Engineer

The Commission shall elect a State Highway Engineer who shall be a Registered Professional Engineer in the State of Texas and a competent civil engineer, experienced and skilled in highway construction and maintenance. He shall hold his position until removed by the Commission. He shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall

act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

[Acts 1925, S.B. 84; Amended by Acts 1965, 59th Leg., p. 689, ch. 328, § 1, eff. Aug. 30, 1965.]

#### Art. 6669a. Expired

#### Art. 6669b. Exchange of Engineering Employees with Mexico

Sec. 1. The Texas Highway Commission is hereby authorized to employ not to exceed five (5) citizens of the Republic of Mexico who are either student or graduate engineers, for a period of not more than six (6) months, and to pay such employees for their services out of the State Highway Fund, provided the Republic of Mexico will employ an equal number of the engineers of the Texas Highway Department in similar work in the Republic of Mexico and pay them for their services for similar periods of time.

Sec. 2. The Texas Highway Commission is further authorized to grant leaves of absence to not to exceed five (5) of its engineering employees for the purpose of accepting employment with the Republic of Mexico as provided in Section 1.

Sec. 3. The provisions of this Law shall be cumulative of all laws on the subject not in actual conflict herewith and all laws or parts of laws in conflict herewith are repealed only in so far as such laws are in actual conflict with the provisions of this Act, and in case of such conflict the provisions of this Act shall control and be effective.

[Acts 1943, 48th Leg., p. 560, ch. 331.]

#### Art. 6670. State Road Map

The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways.

[Acts 1925, S.B. 84.]

#### Art. 6671. Laboratories

The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer for the purpose of testing and analyzing road and bridge material, and those in charge of said

laboratories shall co-operate with and assist said Engineer to that end.

[Acts 1925, S.B. 84.]

#### Art. 6672. Federal Aid

Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways.

[Acts 1925, S.B. 84.]

#### Art. 6673. Control of Highways

The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid.

[Acts 1925, S.B. 84.]

#### Art. 6673a. Sale or Exchange and Conveyance of Abandoned Routes; Correction Deeds; Tax Exemption

##### Sale or Exchange; Deeds

Sec. 1. (a) Whenever the State Highway Commission determines that any real property, or interest therein, heretofore or hereafter acquired by the State for highway purposes, is no longer needed for such purposes, and in the case of highway right-of-way it has further determined that such right-of-way is no longer needed for use of citizens as a road, the State Highway Commission may recommend to the Governor that such land or interest therein be sold, and the Governor may execute a proper deed conveying all the State's rights, title and interest in such land. It shall be the duty of the Commission to determine the fair and reasonable value of the State's interest in such land and to advise the Governor thereof. All money derived from such sales shall be deposited in the State Treasury to the credit of the State Highway Fund. Provided further, that where right-of-way property owned by the State was acquired by a city or county and the State Highway Commission determines that said right-of-way property should be sold, such property shall be sold with the following priorities:

- (1) To abutting or adjoining landowners;
- (2) To original grantors, heirs or assigns of the original tract from whence the right-of-way was conveyed; or
- (3) To the general public.

(b) Notice of said sale shall be advertised at least twenty days before the day of sale by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper in the county in which the real estate is located. Such sale shall be made on a sealed bid basis, and said land shall not be sold for less than the value recommended by the State Highway Commission as provided above.

(c) Upon recommendation of the State Highway Commission, the Governor may execute a proper deed exchanging any such real property, or interest therein, either as a whole or part consideration, for any other real property, or interest therein, needed by the State for highway purposes.

(d) Provided further, that upon recommendation of the State Highway Commission the Governor may execute a proper deed relinquishing and conveying the State's right, title and interest in such real property as follows:

(1) If title to the State was acquired by donation, convey to the grantor, his heirs or assigns; or if acquired by purchase by a county or city, convey to the county or city, or to the grantor, his heirs or assigns at the request of the county or city.

(2) If the rights and interests conveyed to the State consist only of the right to use such property, and title is not held by the State, convey the State's rights and interests to the owner of the fee in said property.

(3) If title or any interest in such property was acquired and held by a county or city in its own name for use by the State, quitclaim to the county or city any interest of the State which might accrue from the State's use of the property; or if there is no record title to such property, quitclaim the State's interests, which might accrue from its use of the property, to the county or city wherein such land is located, or to abutting property owners at the request of the county or city.

(4) Quitclaim the State's title, rights and interest as necessary to comply with reversionary clauses contained in instruments by which the State's title, rights or interests were acquired.

(5) If property has been acquired by or for the State for use as an approach-way to an urban freeway, but, within 12 months after acquisition, the Commission has determined that, due to relocation of the approach-way, the property is not needed for highway purposes, reconvey the property to the grantor from whom it was acquired by or for the State, or to his heirs, successors, or assigns. The sale price shall be the same as the purchase price paid by or for the State, plus six percent interest per annum from the date of that payment by or for the State. When

the Commission determines that the property is not needed for highway purposes, it shall give written notice of that determination to the grantor. The notice shall be mailed to the grantor at his address as of the time of acquisition. Within two years after the notice is mailed, the grantor, his heirs, successors, or assigns may request in writing that the State reconvey the property to them. If at the expiration of the two-year period, no such request has been received by the Commission, the State may then dispose of the property at public sale.

#### Correction of Error or Ambiguity

Sec. 2. In all cases where there is an ambiguity or an error in any instrument by which title to, or any right or interest in, any real property is or has been conveyed to the State of Texas for highway right-of-way purposes because the metes and bounds description of said property is incomplete or incorrect, or for any other reason, and such ambiguity or error is of sufficient consequence to raise doubt as to the location or extent of the property conveyed thereby, or results in the acquisition of land or an interest in land not intended to be included therein and not needed for highway purposes, the Governor of this State, upon receipt of a recommendation from the State Highway Commission that he so do, shall execute and deliver, in the name of the State of Texas, a quit claim deed, correction deed or other conveyance deemed necessary to rectify and resolve any such ambiguity or error.

Sec. 3. Omitted by amendment.

#### Rights of Public Utilities

Sec. 4. Whenever any real property owned by the State and sold and conveyed hereunder is being used by a public utility or common carrier having right of eminent domain for right-of-way and easement purposes the sale, conveyance and surrender of possession herein provided for shall be and remain in all things subject to the right and continued use of such public utility or common carrier.

#### Approval of Transfers; Rights-of-Way Not Infringed; Expenses

Sec. 5. The Attorney General shall approve all transfers and conveyances under this Act, and in no event shall the right of the State of Texas to full and exclusive right of possession of all retained rights-of-way be infringed or lessened in any manner thereby. All expenses of the State Highway Department incurred under any of these provisions, including the cost of advertising all sales made hereunder, shall be borne by the grantee in the deeds issued hereunder and payment of such expenses shall be a condition precedent to the delivery of such deeds.

#### Tax Exemption of Land Used for Road Purposes

Sec. 6. In the event any public road or State highway is located on land in which the fee simple title is not vested in the State or

the county wherein such road is located, such land so dedicated and used for such road purpose shall not be assessed for ad valorem taxation, or the fee simple owner required to pay ad valorem taxes thereon for any purpose so long as same is used for such road purpose. It shall be the duty of the Tax Assessor whenever his attention is called thereto by the fee simple owner of lands so used for public road or State highway purposes to note on the assessment sheet the amount of land so used.

[Acts 1931, 42nd Leg., p. 170, ch. 99; Acts 1953, 53rd Leg., p. 795, ch. 323, § 1; Acts 1967, 60th Leg., p. 1076, ch. 471, § 1, eff. Aug. 28, 1967.]

#### Art. 6673-b. Contracts with Cities, etc., Concerning State Highways

The State Highway Commission is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission.

[Acts 1939, 46th Leg., p. 581, § 1.]

#### Art. 6673-c. Farm-to-Market Roads; Designation of County Roads As

Sec. 1. The State Highway Commission is authorized to designate any county road in the state as a farm-to-market road for purposes of construction, reconstruction, and maintenance only, provided that the Commissioners Court of the county in which any such county road is located shall pass and enter in its minutes an order waiving any rights such county may have for participation by the state in any indebtedness incurred by the county in the construction of such county road; and provided further that the State Highway Commission and the Commissioners Court of the county in which any such road is located may enter into a contract that shall set forth the duties of the state in the construction, reconstruction, and maintenance of the county road in consideration of the county and/or road district relinquishing any and all claims for state participation in any county, road district, or defined road district bonds, warrants, or other evidences of indebtedness outstanding against such road for the construction or improvement of the road before being designated by the State Highway Commission.

Sec. 2. It is hereby declared to be the policy of the state that the assumption by the state

of the obligation to construct and maintain such roads designated by the State Highway Commission as farm-to-market roads under the provisions of this Act constitutes full and complete compensation for any and all funds that might have been expended by any county, road district, or defined road district in the construction and maintenance of said road prior to its designation by the State Highway Commission as a farm-to-market road.

Sec. 3. This Act shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this Act and any other Act on this subject, the provisions of this Act shall prevail.

[Acts 1943, 48th Leg., p. 365, ch. 244.]

**Art. 6673-d. Flight Strips and Roads to Military Reservations; Agreements with United States Public Roads Administration**

Sec. 1. In order to facilitate the war effort, the Texas State Highway Department, upon request of the Commissioner of Public Roads of the United States, is hereby authorized to enter into agreements with the Public Roads Administration in the making of surveys, plans, specifications, and estimates for, and in the construction and maintenance of, flight strips and of roads and bridges necessary to provide access to military and naval reservations, to defense industries and defense industry sites, and to sources of raw materials, and for replacing existing highways and highway connections shut off from general public use at military and naval reservations and defense industry sites, and in the manner authorized by the highway laws of Texas, may enter into contracts for the construction of any such flight strips or roads, or may perform such construction and maintenance work by a force account when such construction and maintenance work, including the costs of surveys, plans, specifications, and estimates, is paid for in whole by Federal funds.

Sec. 2. The authority conferred upon the Texas State Highway Department by this Act shall remain in effect during the continuance of the emergency declared by the President May 27, 1941, and for a period of six (6) months thereafter.

Sec. 3. If any section, sub-section, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

[Acts 1943, 48th Leg., p. 363, ch. 241.]

**Art. 6673e-1. Acquisition of Rights of Way in Cooperation with Local Officials; Payments to Counties and Cities**

In the acquisition of all rights of way authorized and requested by the Texas Highway De-

partment, in cooperation with local officials, for all highways designated by the State Highway Commission as United States or State Highways, the Texas Highway Department is authorized and directed to pay to the counties and cities not less than fifty per cent (50%) of the value as determined by the Texas Highway Department of such requested right of way, or the net cost thereof, whichever is the lesser amount; provided, that if condemnation is necessary, the participation by the Texas Highway Department shall be based on the final judgment, conditioned that such Department has been notified in writing prior to the filing of such suit and prompt notice is also given as to all action taken therein. Such Department shall have the right to become a party at any time for all purposes, including the right of appeal at any stage of the proceedings.

The various counties and cities are hereby authorized and directed to acquire such right of way for such highways as are requested and authorized by the Texas Highway Department, as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, and amendments thereto.

Upon delivery to the Texas Highway Department of acceptable instruments conveying to the State the requested right of way, the Texas Highway Department shall prepare and transmit to the Comptroller of Public Accounts vouchers covering the reimbursement to such county or city for the Department's share of the cost of providing such right of way, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the appropriate account covering the State's obligations as evidenced by such vouchers.

The Texas Highway Department is authorized and directed to acquire by purchase, gift or condemnation all right of way necessary for the National System of Interstate and Defense Highways.

[Acts 1957, 55th Leg., p. 731, ch. 301, § 1; Acts 1971, 62nd Leg., p. 1204, ch. 292, art. 5, § 4, eff. July 1, 1971; Acts 1971, 62nd Leg., p. 1211, ch. 293, § 4, eff. July 1, 1971.]

**Art. 6673e-2. Expenditure of Additional Funds**

From and after the effective date of this Act, the Texas Highway Department shall expend the additional funds provided for by Section 2 of this Act, which is derived from Section 10 of Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended,<sup>1</sup> for the acquisition of rights of way.

[Acts 1957, 55th Leg., p. 731, ch. 301, § 3.]

<sup>1</sup> Article 6675a-10.

**Art. 6673e-3. Planting Trees on Rights-of-Way**

Sec. 1. The State Highway Department shall plant and care for a substantial number of pecan trees on United States and state highway rights-of-way throughout the state. In

areas where the climate is unsuitable for the growth of pecan trees, or where pecan trees present a safety hazard, the State Highway Department shall plant other trees which are indigenous or adaptable to the (particular) area, and present no safety hazards.

Sec. 2. The cost of acquiring, planting, and caring for the pecan trees shall be borne by the state highway fund.

[Acts 1971, 62nd Leg., p. 938, ch. 149, eff. Aug. 30, 1971.]

**Art. 6673e-4. Designation of State Highways by Local Governments**

**Definitions**

Sec. 1. In this Act, unless the context requires a different definition:

(1) "Commission" means the State Highway Commission.

(2) "Department" means the Texas Highway Department.

**Commission; Naming State Highways Prohibited**

Sec. 2. The commission shall not officially name any road, bridge, street, or highway in the state highway system for a person or persons, living or dead, nor for any organization or event; nor shall the commission give these parts of the highway system any name or symbol other than the regular highway number.

**Local Governments; Memorial or Identifying Designation**

Sec. 3. Local governmental units may assign a memorial or other identifying designation to any part or parts of the highway system; provided, however, that any part or parts of the highway system that are named or identified locally will be marked only with the regular highway number.

**Memorial Marker**

Sec. 4. Local governmental units may purchase and furnish to the department a suitable locally-identifying memorial marker of a size and type which must be approved by the state highway engineer. Upon request, the department may erect such marker at a place most suitable to the department's maintenance operations.

**Multi-Governmental Unit Cooperation; Marker Placement**

Sec. 5. When two or more local governmental units cooperate in seeking a single continuous memorial designation for a highway through their limits, markers may be furnished to the department to be erected at each end of the designated limits, and at such intermediate sites that markers shall be approximately 75 miles apart.

**Designation Sponsors, Duties; Site Selection and Preparation**

Sec. 6. When a memorial designation is planned by a local governmental unit or units, the sponsor or sponsors shall submit to the state highway engineer a complete description of the nature and objectives of the dedication,

and the type and full description of the marker or markers to be erected. If approved by the state highway engineer, a period of 90 days shall be required from the date of approval to the actual erection of the marker or markers, in order for the department to select and prepare a proper site or sites.

**Maintenance of Grounds and Markers**

Sec. 7. The maintenance of grounds surrounding the markers shall be the responsibility of the department, but repairs or replacement of the markers shall be made by the sponsoring governmental unit.

**Construction of Act**

Sec. 8. This act shall not supersede nor be in conflict with any existing statutes regulating the signing and marking of roads or streets nor shall it void or supersede the authority of local governmental agencies to regulate and sign roads and streets within their jurisdiction.

[Acts 1971, 62nd Leg., p. 1680, ch. 477, eff. Aug. 30, 1971.]

**Art. 6674. Operating Expenses**

The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer and all other employes of the Department, and determine the number of such employes; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided.

[Acts 1925, S.B. 84.]

**1A. CONSTRUCTION AND MAINTENANCE**

**Art. 6674a. Definition of Terms**

The term "highway" as used in this Act<sup>1</sup> shall include any public road or thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto. The term "improvement" shall include construction, reconstruction or maintenance, or partial construction, reconstruction or maintenance and the making of all necessary plans and surveys preliminary thereto. The term "Commission" refers to the State Highway Commission and the term "Department" refers to the State Highway Department.

[Acts 1925, 39th Leg., ch. 86, p. 456, § 1.]

<sup>1</sup> Articles 6674a to 6674n.

**Art. 6674b. Highway System**

All highways in this State included in the plan providing a system of State Highways as prepared by the State Highway Engineer in accordance with Section 11 of Chapter 190 of the General Laws of the Regular Session of the Thirty-fifth Legislature<sup>1</sup> are hereby designated as the "State Highway System."

[Acts 1925, 39th Leg., ch. 186, p. 456, § 2.]

<sup>1</sup> See article 6670.

**Art. 6674c. Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3****Art. 6674c-1. Contributions From Counties or Political Subdivisions for Roads Therein**

Any county, or any other political subdivision of this State, or political subdivision of any county, acting through its governing agency, may make, and the State Highway Commission, in its discretion, may accept, voluntary contributions of available funds from such county, or any other political subdivision of this State, or political subdivision of any county for expenditure by the State Highway Commission in the proper development and construction of the public roads and State Highway System within such county, or any other political subdivision of this State, or political subdivision of any county.

[Acts 1947, 50th Leg., p. 25, ch. 18, § 1; Acts 1965, 59th Leg., p. 301, ch. 133, § 1, eff. May 6, 1965.]

**Art. 6674d. Federal Aid**

All further improvement of said State Highway System with Federal aid shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Highway Department either with or without county aid. Surveys, plans, specifications and estimates for all further improvement of said system with Federal aid or with Federal and State aid shall be made and prepared by the State Highway Department. No further improvement of said system shall be made under the direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Highway Engineer.

Nothing in this section or this Act<sup>1</sup> shall be construed as prohibiting the granting of State aid under the provisions of Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature and subsequent amendments thereto, nor shall anything in this Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement.

[Acts 1925, 39th Leg., ch. 186, p. 456, § 4.]

<sup>1</sup> Articles 6674a to 6674n.

**Art. 6674d-1. Federal Aid on Non-State Highway System Roads**

From and after the effective date of this Act, all moneys appropriated by the Congress

of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on roads not on the system of State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal Funds is prohibited or impractical.

[Acts 1939, 46th Leg., p. 579, § 1.]

**Art. 6674e. Appropriations from Highway Fund**

All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act<sup>1</sup> and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Highway Department.

[Acts 1925, 39th Leg., ch. 186, p. 457, § 5.]

<sup>1</sup> See 23 U.S.C.A. § 101 et seq.

**Arts. 6674f, 6674g. Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3****Art. 6674h. Competitive Bids**

All contracts proposed to be made by the State Highway Department for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than Twenty-five Thousand (\$25,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. Provided further, that any person, firm or corporation may make application to have the name of said applicant placed upon a mailing list to receive notices of lettings of any contracts provided for herein; and notices of said lettings shall be mailed by

the Highway Commission of the State of Texas to all persons, firms or corporations on said mailing list. The Highway Commission shall have the right to require all applicants to deposit with the commission a sum of not exceeding Fifteen (\$15.00) Dollars per year to cover costs of mailing notices.

[Acts 1925, 39th Leg., ch. 186, p. 457, § 8; Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 1.]

#### Art. 6674i. Opening and Rejecting Bids

The State Highway Department shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Highway Engineer, at Austin, Texas, and shall be opened at a public hearing of the State Highway Commission. All bidders may attend and all bids to be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. Provided however, on contracts involving less than Twenty-five Thousand (\$25,000.00) Dollars bids may in the discretion of the Highway Commission be received at a public hearing by the Division Engineer at the Division Headquarters. All bids so received by the Division Engineer shall be tabulated and forwarded to the State Highway Commission, shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder. It shall be the duty of the Highway Commission to prescribe rules and regulations on all bidders on bids received by Division Engineers, but the rules and regulations required by the State Highway Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to Division Engineers.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 9; Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 2.]

#### Art. 6674j. Contractor's Bond

The successful bidder or bidders shall enter into written contracts with said department, and shall give bond in such amounts as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department for the use and benefit of the State Highway Fund.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 10.]

#### Art. 6674k. Form of Contract

The State Highway Commission shall prescribe the form of such contracts and may include therein such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 11.]

#### Art. 6674l. Signing Contracts

Every such contract for highway improvement under the provisions of this Act<sup>1</sup> shall be made in the name of the State of Texas, signed by the State Highway Engineer, approved by at least two members of the State Highway Commission and signed by the contracting party, and no such contract shall be entered into

which will create a liability on the part of the State in excess of funds available for expenditure under the terms of this Act.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 12.]

<sup>1</sup> Articles 6674a to 6674n.

#### Art. 6674m. Partial Payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 13; Acts 1959, 56th Leg., p. 938, ch. 434, § 1; Acts 1963, 58th Leg., p. 129, ch. 76, § 1, eff. April 26, 1963.]

#### Art. 6674n. Condemnation of Right of Way and Materials by Commissioners' Court

Whenever, in the judgment of the State Highway Commission, the use or acquisition of any land for road, right of way purposes, timber, earth, stone, gravel or other material is necessary or convenient to any road to be constructed, reconstructed, maintained, widened, straightened or lengthened, or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway by the State Highway Commission, the same may be acquired by purchase or condemnation by the County Commissioners Court. This authority includes the power to exercise the right of eminent domain by any County Commissioners Court within the boundaries of a municipality with the prior consent of the governing body of such municipality. Provided that the county in which the State highway is located may pay for same out of the County Road and Bridge Fund, or any available county funds.

Any Commissioners Court is hereby authorized to secure by purchase or by condemnation on behalf of the State of Texas, any new or wider right of way or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway, or land or lands for material or borrow pits, to be used in the construction, reconstruction or maintenance of State Highways and to pay for the same out of the County Road and Bridge Fund, or out of any special road funds or any available county funds. This authority includes the power to exercise the right of eminent domain by any County Commissioners Court within the boundaries of a municipality with the prior consent of the governing body of such municipality. The State Highway Commission shall be charged with the duty of furnishing to the County Commissioners Court the plats or field notes of such right of way or land and the description of such materials as may be required, after which the Commissioners Court may, and is hereby authorized to purchase or condemn the same, with title to the State of Texas, in accordance with such field notes. Provided that

in the event of condemnation by the County the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925. Provided that if the County Commissioners Court of any County in which such right of way is, in the judgment of the State Highway Commission, necessary for the construction of a part of a designated State Highway shall fail or refuse to secure by purchase or by condemnation for or on behalf of the State of Texas, such right of way or part thereof, immediately and as speedily as possible, under said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925, after being served with a copy of an order of the State Highway Commission identifying by field notes, the part of the Highway necessary for the construction of such designated State Highway and requesting such County Commissioners Court to secure same, then and in such event and within ten (10) days after the service of such notice, said State Highway Commission shall direct the Attorney General of Texas, to institute condemnation proceedings in the name of the State of Texas, for the purpose of securing such right of way. Such condemnation proceedings shall be instituted by the County or District Attorney of the County in which the land is situated and the venue of such proceedings shall be in the county in which the land is situated and jurisdiction and authority to appoint three (3) disinterested freeholders of such County as Commissioners is hereby conferred upon the County Judge of such County in which the land is situated and otherwise such condemnation shall be according to the provisions of said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 14; Acts 1929, 41st Leg., 32d C.S., p. 243, ch. 10; Acts 1930, 41st Leg., 5th C.S., p. 243, ch. 79; Acts 1933, 43rd Leg., p. 622, ch. 207; Acts 1935, 44th Leg., p. 485, ch. 199, § 1; Acts 1955, 54th Leg., p. 1128, ch. 423, § 1.]

**Art. 6674n-1. Agreements for Cultivation by Adjoining Owners of Land Not Needed Immediately**

The Texas Highway Department may enter into written agreements with owners of the lands abutting or adjoining the lands acquired by the Department for right of way for any highway, farm-to-market road, or other roadway in the State Highway System, under the terms of which such owners of abutting or adjoining lands may be authorized to use and cultivate such portions of the right of way as may not be required for immediate use of the Department. The agreements may contain provisions regarding the use, cultivation, construction of improvements, the placement of fences and such other matters as may be mutually agreed to by the Department and the respective owners of the abutting or adjoining lands. Such agreements shall be executed by the owners of the adjoining or abutting lands and the State Highway Engineer or his authorized rep-

resentative; provided, however, that the Department, by such agreements, may not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the road for which it was acquired, nor shall use by adjoining or abutting land owners under such agreement ever be construed as abandonment by the Department of such lands acquired for right-of-way purposes.

[Acts 1951, 52nd Leg., p. 795, ch. 439, § 1.]

**Art. 6674n-2. Condemnation of Rights of Way and Easements Within Municipalities by Counties**

The right of eminent domain within the boundaries of a municipality with prior consent of the governing body of such municipality is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is, in the judgment of the Commissioners Court of such county, necessary or convenient to any road which forms or will form a connecting link in the county road system or a connecting link in a State Highway.

All such condemnation proceedings shall be instituted under the direction of the Commissioners Court, and in the name of the county and the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as amended. Provided, that no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way or easement is sought to be acquired; and provided further that in case of appeal counties shall not be required to give bond, nor shall they be required to give bond for costs.

[Acts 1959, 56th Leg., p. 566, ch. 257, § 1.]

**Art. 6674n-3. Costs of Relocating or Adjusting Eligible Utility Facilities in Acquisition of Rights-of-Way**

Sec. 1. In the acquisition of all highway rights-of-way by or for the Texas Highway Department, the cost of relocating or adjusting utility facilities which cost may be eligible under the law is hereby declared to be an expense and cost of right-of-way acquisition.

Sec. 2. All contracts or agreements heretofore made and entered into by the various counties and cities for the purposes stated above are hereby ratified and validated.

[Acts 1963, 58th Leg., p. 654, ch. 240, eff. May 30, 1963.]

**Art. 6674n-4. Renumbered as Art. 3266b**

**Art. 6674o. Maintenance of Detour Roads**

Sec. 1. From and after the taking effect of this Act, it shall be the duty of the State Highway Department, wherever construction on any

part of the State System of Highways is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and improvement and maintenance of an all-weather detour road, to be used and controlled during the period of such State use under like conditions and authority as exercised over parts of the designated system of State Highways; and the Highway Commission shall provide for the equipment of such detour roads in a manner adequate to the convenience and safety of the normal traffic diverted thereupon; counties are hereby required to render the State Highway Commission such cooperation as may be necessary for adequate provision for the traffic requirements of the public in the selection and maintenance of all such detour roads in or through the county.

Sec. 2. From and after the taking effect of this Act, it shall be the duty of any County Commissioners' Court in this State wherever construction upon any part of the County System of Public Roads, not parts of the designated State System of Highways, is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and use of a detour road, to be controlled and maintained during the period of such county use under like conditions of authority as exercised over an established public road.

Sec. 3. In all such provisions for detour roads by State Highway Commission, and in all provisions for detour roads by County Commissioners' Courts it shall be the duty of the State Highway Commission, or Commissioners' Court, as the case may be, to post all necessary signboards for the convenience and guidance of the public at each end of such detour road, and provide with reasonable adequacy for the maintenance of the detour roads in a manner to respond to normal traffic requirements passing over such State highways or such county roads.

[Acts 1929, 41st Leg., p. 59, ch. 25.]

#### Art. 6674o-1. Forbidding Use of Highway

The County Commissioners of any precinct, or County Road Superintendent of any county, or road Supervisor whose road is affected, or the State Highway Commission, may have the authority by posting notices on the highways or roads under their respective control when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The notices provided for herein shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted

highways or portions thereof; provided no road shall be closed until detours have been provided.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the County Judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the County Road Superintendent or Road Supervisor, or the State Highway Commission, and the judgment of the County Judge shall be final as to the issues raised. If upon such hearing the judgment sustains the order of the County Road Superintendent or road Supervisor and it appears that any violation of same has been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if the same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of any such order or notice of the County Road Superintendent or road Supervisor, or the State Highway Commission, before or after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars.

[1925 P.C.; Acts 1929, 41st Leg., p. 660, ch. 294, § 1.]

#### Art. 6674p. Minimum Wage for Highway Labor; Citizens' Preference in Employment

Sec. 1. Hereafter the State Highway Commission in letting contracts for the construction, maintenance or improvement of any designated State Highway, shall be authorized to require that all contracts for any such work, contain a provision that no person will be employed, by the contractor, to perform manual labor in the course of the construction, maintenance or improvement of any such highway at a wage of less than thirty cents per hour, and that any violation of any such provision of the contract by the contractor, sub-contractor, or other person subject to such provision of the contract, shall authorize the Commission to withhold from any money due the contractor a sufficient sum to pay any person such minimum wage for any labor performed, or the Commission may, for the benefit of any such person, recover such sum on the bond of the contractor, if it does not have in its possession money owing the contractor, applicable for such purposes. That citizens of the United States and of the county wherein the work is being proposed shall always be given preference in such employment; provided also that all other departments, bureaus, commissions

and institutions of the State of Texas in all construction work of every character requiring employment of day labor shall likewise be authorized and empowered to exercise the same authority herein conferred on the State Highway Commission.

Sec. 2. Hereafter, in advertising for bids for the construction, maintenance or improvement of any designated State Highway, the Commission, in the event it desires to exercise the authority herein conferred to require a provision for such minimum wage, shall so state in the advertisement, so that all bidders may be aware of such requirement in submitting bids for such work.

[Acts 1931, 42nd Leg., p. 69, ch. 46.]

#### Art. 6674q. Exchange of Lands by State Highway Commission

The State Highway Commission is hereby authorized and empowered at its discretion to exchange any lands or interests therein heretofore donated to the State of Texas, either for right of way purposes, or for the use of the people of Texas for camping accommodations and for park purposes, under and pursuant to the provisions of Chapter 37 of the General and Special Laws of the First Called Session of the Fortieth Legislature, page 110, for other lands or interests therein, located adjacent to or accessible from the state highway provided for in said Act and deemed by the Commission, in its discretion, to be more desirable for said purposes than said lands or interests heretofore donated; the State Highway Commission is authorized to execute the necessary deeds or conveyances for the purposes stated to be signed by the chairman pursuant to the order of the Commission.

[Acts 1933, 43rd Leg., p. 761, ch. 224, § 1.]

#### Art. 6674q-1. Declaration of Policy of State with Reference to Building, Maintaining and Financing State Designated Roads

It is expressly recognized and declared that all highways now or heretofore constituting a part of the system of State Highways and that all roads not constituting a part of such system, which have been constructed in whole or in part from the proceeds of bonds, warrants, or other evidence of indebtedness issued by counties of the State of Texas, or by defined road districts of the State of Texas, under the laws authorizing the same, have been and are and will continue to be beneficial to the State of Texas at large, and have contributed to the general welfare, settlement, and development of the entire state, and that, by reason of the foregoing, a heavy and undue burden was placed, and still rests, upon the counties and defined road districts and their inhabitants, and both a legal and moral obligation rests upon the state to compensate and reimburse such counties and defined road districts which, as aforesaid, have performed functions resting upon the state, and have paid expenses which were and are properly state expenses; all for

the use and benefit of the state, and to the extent provided herein that the state provide funds for the further construction of roads not designated as a part of the State Highway System.

Having heretofore, by an Act of the Legislature (Chapter 13, Acts of the Third Called Session of the 42nd Legislature in 1932), taken over, acquired, and purchased the interest and equities of the various counties and defined road districts in and to the highways constituting a part of the system of then designated State Highways, it is further declared to be the policy of the state to take over, acquire, purchase, and retain the interest and equities of the various counties and defined road districts in and to the highways, not previously taken over, acquired, and purchased and constituting on January 2, 1939, a part of the system of designated State Highways, and to acquire and purchase the interest and equities of the various counties and defined road districts in and to the roads not constituting a part of the system of designated State Highways as of January 2, 1939, and under the provisions of this Act<sup>1</sup> to acquire such interest and equities in such roads hereafter to be constructed with money furnished by the state, and to reimburse said counties and districts therefor, and to provide for the acquisition, establishment, construction, extension and development of the system of designated State Highways of Texas, from some source of income other than the revenues derived from ad valorem taxes, it being expressly provided herein that the state is not assuming, and has not assumed, any obligation for the construction, extension, and development of any of the highways thus acquired and purchased which do not constitute a part of the system of designated State Highways. And it is hereby determined that the further provisions of this Act constitute fair, just, and equitable compensation, repayment, and reimbursement to said counties and defined districts and for their aid and assistance to the state in the construction of State Highways and for the construction of said roads which are ancillary to, but do not constitute a part of said System of State Highways, and fully discharges the legally implied obligations of the state to compensate, repay, and reimburse the agencies of the state for expenses incurred at the instance and solicitation of the state, as well as for expenses incurred for the benefit of the state, and fully discharges the state's legally implied obligation to such counties and defined road districts to provide additional funds for the further construction of roads not designated as a part of the State Highway System.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Articles 6674q-1 to 6674q-11.

#### Art. 6674q-2. Definitions

By the expression "defined road districts" or "road districts" or "districts" used in this Act,<sup>1</sup>

is meant any defined road district of the state or any Justice or Commissioners Precinct acting as a road district or any road district located in one or more than one county.

By the expression "roads" or "road" as used in this Act, is meant roads, road beds, bridges, and culverts.

By the expression "highways," "State Highways" and "State Designated Highways" are meant roads which prior to January 2, 1939, had become a part of the System of designated State Highways, including roads still constituting a part of such system on said date and those which theretofore constituted a part of such system, but whose status had been lost through change, relocation or abandonment and including roads concerning which the State Highway Commission had prior to January 2, 1939, indicated its intention to designate, evidencing such intention in the official records or files.

All roads which prior to January 2, 1941, had not become a part of the system of State Designated Highways, for convenience in this Act, are called "lateral roads."

The term "Board" as used in this Act, when the contrary is not clearly indicated, shall mean the "Board of County and District Road Indebtedness."

The term "fund" as used in this Act, when the contrary is not clearly indicated, shall mean the "County and Road District Highway Fund."

The expression "eligible obligations" as used in this Act shall mean obligations, the proceeds of which were actually expended on State Designated Highways.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 2; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Articles 6674q-1 to 6674q-11.

**Art. 6674q-3. Omitted by Acts 1939, 46th Leg., p. 582, § 1**

**Art. 6674q-4. Improvements Under Control of State Highway Department**

All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said system shall be made, prepared and paid for by the State Highway Department. No further improvement of said system shall be made with the aid of or with any moneys furnished by the counties except the acquisition of right-of-ways which may be furnished by the counties, their subdivisions or defined road districts. But this shall in no wise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners Court of any county, for such county, or for any de-

defined road district. In the development of the System of State Highways and the maintenance thereof, the State Highway Commission shall from funds available to the State Highway Department, provide:

(a) For the efficient maintenance of all highways comprising the State System.

(b) For the construction, in co-operation with the Federal Government to the extent of Federal Aid to the state, of highways of durable type of the greatest public necessity.

(c) For the construction of highways, perfecting and extending a correlated system of State Highways, independently from state funds.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3, (formerly § 4); Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-5. Repealed by Acts 1951, 52nd Leg., p. 695, ch. 402, § XXIV (§ 2)**

**Art. 6674q-6. Allocation of Funds from Gasoline Tax**

Each month the Comptroller of Public Accounts after computing and ascertaining the maximum amount of refunds that may be due by the state on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the 41st Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the 42nd Legislature,<sup>1</sup> shall deduct same from the total occupation or excise tax paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the 42nd Legislature, as amended,<sup>2</sup> and beginning with said taxes collected on or after October 1, 1932, shall, after deducting the said maximum amount of refunds, allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: one-fourth ( $\frac{1}{4}$ ) of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth ( $\frac{1}{4}$ ) of the same shall go to, and be placed to the credit of a fund to be known as the "County and Road District Highway Fund", subject to the provisions and limitations of Section 3 of this Act;<sup>3</sup> the remainder of such occupation or excise tax shall go to, and be placed to the credit of the State Highways Fund, for the construction and maintenance of the public roads of the state, constituting and comprising the System of State Highways of Texas, as designated by the State Highway Commission of Texas.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 5, (formerly § 6); Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Article 7065n, subds. 3, 5 (now repealed).

<sup>2</sup> Articles 7065a, 7065e, 7065f, 7065h, 7065j; Penal Code (1925) art. 141c (all now repealed).

<sup>3</sup> Article 6674q-4.

**Art. 6674q-7. County and Road District Highway Fund; Distribution; Board of County and District Road Indebtedness Continued; Powers and Duties; Lateral Road Account**

**Eligibility to Participate in Fund**

(a) All bonds, warrants or other evidences of indebtedness heretofore issued by counties or defined road districts of this state, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated State Highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways or any road that heretofore had constituted a part of said System and which has been or may be changed, relocated or abandoned, whether said indebtedness is now evidenced by the obligation originally issued or by refunding obligations or both, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund, subject to the provisions of this Act; provided, that such indebtedness, the proceeds of which have been expended in the construction of roads which have been designated as a part of the State Highway System after September 17, 1932, and prior to January 2, 1939, shall participate in said County and Road District Highway Fund as of the date of the designation of said road as a part of the State System; provided further that any participation in said fund by any county or defined road district shall be less the amount of money which it was required to accumulate in the sinking fund under the provisions of the Statutes and order of the Commissioners Court authorizing the issue of said eligible obligations, and the tax levy authorized at the time of issuance thereof for the time such obligations have run or may have run, regardless of whether the full amount of said fund is, or may be, actually on hand and to the credit of the sinking funds of such county or defined road district. It is provided expressly in this connection that the term "sinking funds" shall include only those funds required under the law for the retirement of principal and interest, and shall not include any excess or surplus which may have been accumulated by any county or defined road district above the legal requirements. The amount of such eligible indebtedness shall be determined as hereinafter provided. Provided further, that no state funds created or provided for by the terms of this Act shall be expended in the payment of any interest maturing on the amount of sinking funds required by the terms of this Act to be accumulated by the county or defined road district at the date of eligibility of its obligations.

In the event that State Highway Commission has, on a date prior to January 2, 1939, recorded a conditional designation, and all conditions precedent to the official designation thereof

have been met or performed in a manner satisfactory and acceptable to the Highway Commission, and the Highway Commission officially enters of record its acceptance and designation of such road as a part of the State Highway System for maintenance, then the provisions of this Act shall apply as if the said roads had been actually designated prior to January 2, 1939.

All bonds, warrants or other legal evidences of indebtedness outstanding as of the date of the designation hereinafter referred to, and issued by a county or defined road district prior to January 2, 1939, insofar as amounts of same were issued and the proceeds actually expended in the construction of roads that have been officially designated as a part of the State Highway System subsequent to January 2, 1939, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund as of the date of designation of said road as a part of the State Highway System. The amount of such bonds, warrants, or other legal evidences of indebtedness outstanding as of the date of designation of such road as a part of the State Highway System, shall be eligible for participation in the same manner as provided for other bonds under this Act.

In addition to and regardless of the other provisions of this Act, all bonds, warrants or other legal evidences of indebtedness voted, or issued without being voted by a county, road district or defined road district prior to January 2, 1939, insofar as amounts of same were or may be issued and the proceeds actually expended in the construction of roads which are now a part of the designated System of State Highways or which have since, or which may hereafter become a part of the designated System of State Highways, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund the same as provided for other bonds under this Act, and as of the date of the designation of said road as a part of the State Highway System; and where such bonds or warrants were voted prior to January 2, 1939, and prior to the designation of the road as a State Highway and which have not yet been issued or expended, the county or defined road district may issue such bonds or warrants or other legal evidence of indebtedness and place the proceeds in escrow with the State Highway Commission for the construction of such road under plans, contracts, specifications and supervision of the State Highway Department, and when so expended the bonds, warrants, or other evidences of indebtedness shall be eligible to participate in the County and Road District Highway Fund the same as if the bonds had been issued and expended prior to January 2, 1939. Provided, further, that all such bonds or warrants to be hereafter sold pursuant to this paragraph by a county or defined road district which will be eligible for participation in the County and Road District Highway Fund

under the provisions of this Section, shall be sold subject to the approval of the Board of County and District Road Indebtedness, as to amounts, maturities and interest rates.

#### Administration of Act

(b) The Board of County and District Road Indebtedness, created by Chapter 13, Acts of the Third Called Session of the 42nd Legislature,<sup>1</sup> consisting of the State Highway Engineer, State Comptroller of Public Accounts, and State Treasurer, is hereby continued and charged with the duties of administering this Act. The State Comptroller of Public Accounts shall be the Secretary of said Board and said Board shall elect its own chairman from its membership. The Board shall adopt its own rules consistent with this Act for the proceedings held hereunder, and shall have authority to call to its assistance, in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund, any official or employee of this state, and shall avail itself of all data and information assembled in the administration of Chapter 13, Acts of the Third Called Session of the 42nd Legislature,<sup>1</sup> and said Board is hereby authorized to call on any County Judge or any county or state official or employee, and shall have full access to all the records, books, and public documents for the purpose of obtaining any information which it may deem necessary and pertinent to its inquiry in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund.

<sup>1</sup> Article 6674q-1 et seq.

#### Determination of Amount of Eligible Indebtedness

(c) It shall be the duty of the Board of County and District Road Indebtedness, from the data and information furnished by the County Judges of the state, and by the Chairman of the State Highway Commission and by the State Comptroller of Public Accounts, and from such further investigation as said Board may deem necessary to ascertain and determine the amount of indebtedness eligible under the provisions of this Section of this Act to participate in the moneys coming into said County and Road District Highway Fund. Whenever, in the case of any particular issue of obligations, the proceeds thereof shall have been expended partly on designated State Highways, or highways heretofore constituting designated State Highways, and partly on roads which never have been designated State Highways, said Board shall ascertain and determine the amount of said obligations, the proceeds of which were actually expended on State Highways or on roads heretofore constituting State Highways, and said obligations to said amount and extent shall be eligible for participation in the moneys coming into the County and Road District Highway Fund; and said ascertainment and determination shall be certified to the County Judge by said Board and all of the

unmatured outstanding obligations of said issue shall ratably have the benefit of said participation in said moneys. The ascertainment and determination by the Board of County and District Road Indebtedness, after reasonable notice and hearing, of the amount of any county or defined road district obligations eligible under the provisions of this Act to participate in any moneys coming into the County and Road District Highway Fund, or as to the amount of any obligations the proceeds of which were actually expended on State Highways, or on roads heretofore constituting State Highways, shall be final and conclusive and shall not be subject to review in any other tribunal. But said Board of County and District Road Indebtedness shall have the right at any time to correct any errors or mistakes it may have made.

#### Records

(d) The Board shall make and keep a record of all county and defined road district eligible obligations, issue by issue, and a book shall be prepared and kept in which shall be recorded all eligible issues, maturity dates of principal and interest, rates of interest, and places of payment for each county and each defined road district. Each issue and the date pertaining to same shall be listed separately. The Board shall keep a record of all vouchers issued.

#### Separate Accounts

(e) The State Treasurer shall keep a separate account for each county and defined road district of any moneys received for the credit of said county or defined road district pursuant to the provisions hereof.

#### Lists Showing Eligible Indebtedness

(f) A list shall be compiled by the Board of County and District Road Indebtedness showing the amount ascertained and determined by it to be eligible indebtedness of each county and defined road district, and a copy thereof shall be furnished to each County Judge in this state.

#### Annual Estimates of Sums Necessary

(g) From year to year, and not later than July 15th of each year, said Board shall ascertain and determine the sum necessary to pay the interest, principal and sinking fund requirements on all eligible obligations for the next succeeding calendar year, and shall estimate the sum which shall be applicable to the same, and shall not later than August 1st of each year, give notice to the County Judge of each county of the estimated amount available for application to said interest, principal, and sinking fund requirements. In the event the amount so estimated to be applied to the payment of eligible obligations for any county or defined road district is sufficient to meet all maturing interest, principal, and sinking fund requirements, the Commissioners Court may dispense with the collection of ad valorem levies for such calendar and/or fiscal year for such interest, principal, or sinking fund re-

quirements. In the event the amount of payments so estimated to be applied is not sufficient to meet the maturing interest, principal, and sinking fund requirements, the County Commissioners Court shall collect from taxes on the property in said respective counties and defined road districts, an amount of money equal to the difference between the amount of such requirements and the amount available for application. In this connection it is declared to be the intent of the Legislature that all contractual duties and obligations which may exist between any county and/or defined road district and the owner or holder of the present outstanding indebtedness or any county and/or defined road district, shall not be in any manner disturbed or impaired and shall remain inviolate. Any tax heretofore provided to be levied in support of any present outstanding indebtedness affected by the provisions of this Act shall continue to be assessed, levied, and collected as originally provided; however, the collection of said tax may, by order of the Commissioners Court, be lessened and reduced by the payments made, and to be made, thereon and in behalf of such indebtedness out of the County and Road District Highway Fund, as herein provided, and as succeeding Legislatures shall, by appropriation, make provisions therefor. The entire proceeds of all taxes collected on any eligible issue of bonds shall be remitted by the County Treasurer of each county collecting the same, together with a statement of the amount collected, to the State Treasurer, and shall be held by the State Treasurer as ex-officio Treasurer of said county or defined road district for the benefit of the county or defined road district remitting the same, and be disbursed to meet the interest, principal, and sinking fund requirements on the eligible obligations of said county or defined road district.

In the event the amount of funds available to be applied to meet the maturing interest, principal, and sinking fund requirements in any calendar or fiscal year is not sufficient to satisfy such requirements, the moneys available in the County and Road District Highway Fund, as estimated and determined by the Board, shall be, for that calendar or fiscal year first applied to the payment and satisfaction of interest maturing on all eligible obligations during the particular calendar and/or fiscal year, and this payment is to be made ratably upon the interest on eligible obligations of the various counties or defined road districts; and if there is more of said moneys available than necessary to pay all of said interest, then such balance over the required interest payment for such year shall be distributed ratably to each issue of eligible obligations on the basis of the principal of eligible obligations and sinking fund requirements thereon maturing each year.

#### Allocation of Surplus

(h) On September first of each year after the Board has paid off and discharged all eligi-

ble obligations maturing during the preceding fiscal year, together with the interest on such obligations and the sinking fund requirements accruing thereon out of the County and Road District Highway Fund, any surplus remaining in said Fund over and above Two Million Dollars (\$2,000,000) shall be set aside and credited by the State Treasurer to the respective funds hereinafter named as follows: One-half ( $\frac{1}{2}$ ) of said surplus shall be credited to an account in the State Highway Fund to be known as the "Farm Highway Account," and one-half ( $\frac{1}{2}$ ) shall be credited to an account to be known as the "Lateral Road Account," said funds to be distributed and expended as hereinafter provided.

All moneys deposited in the Farm Highway Account shall be used by the State Highway Commission to match any available funds, other than Federal funds, and all of said moneys shall be used for the sole purpose of constructing or improving farm-to-market roads, which said construction or improvements shall be done or made by the State Highway Commission and not by contract.

As soon as practicable after the passage of this Act and before the Lateral Road Account is allocated to the counties, the Board shall determine the amount each county and each defined road district has paid since January 1, 1933, under the provisions of Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, as amended,<sup>1</sup> toward its debt service upon bonds which at the time of payment were eligible to participate in the County and Road District Highway Fund, and shall deduct from the amount paid by such county or defined road district any and all advancements made by the Board to such county or defined road district in adjusting, refunding, or pre-paying the eligible obligations of such county or defined road district, and after making such deductions the Board shall credit the Lateral Road Account of each county or defined road district with the net balance contributed by such county or road district toward the retirement of said eligible obligations and said funds so credited to any county or defined road district may be used or expended by the counties and defined road districts for the purposes authorized in this Section.

Not later than September fifteenth of each year the said Board shall ascertain the exact amount of money which has been allocated to the said Lateral Road Account for such fiscal year and which at that time is available. The Board shall allocate to each county its proportionate part of the moneys in said Lateral Road Account, which allocation shall be determined in the following manner:

(1) Two-tenths ( $\frac{2}{10}$ ) of the moneys in said Account shall be allocated upon the basis of area, determined by the ratio of the area of the county to the total area of the State.

(2) Four-tenths ( $\frac{4}{10}$ ) of the moneys in said Account shall be allocated on the ba-

sis of rural population according to the last preceding Federal Census, determined by the ratio of the rural population of the county to the total rural population of the State.

(3) Four-tenths ( $\frac{4}{10}$ ) of the moneys in said Account shall be allocated to the counties on the basis of lateral road mileage, determined by the ratio of the mileage of the lateral roads in the county to the total mileage of the lateral roads in the State as of January 1, 1939, as shown by the records of the State-Federal Highway Planning Survey and the State Highway Department.

If the records of the Highway Department and the State-Federal Highway Planning Survey are such that, in the opinion of the Highway Commission or of any county, there is a reasonable doubt as to their accuracy, the Highway Commission may authorize an independent survey to be made of that county's lateral road mileage upon its own motion or on the application of said county. The expense of such survey shall be borne by the county.

The moneys allocated to each county from the Lateral Road Account shall be used by said county first for paying the principal, interest, and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants, and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring right of ways for State designated highways, it being the intention of the Legislature to designate and set apart sufficient money to pay off and discharge said outstanding obligations incurred for right of way acquisition. The Board shall require from each county a sworn statement of the outstanding right of way indebtedness incurred on State designated highways, and in the event a false statement is furnished the Board by any county, or where any county fails or refuses to file a report, then such county shall be denied any benefits under this Section; it being the duty of the Board before distributing any funds to any county under this Section where such county submits a report that it has no right of way indebtedness, or where said report is vague or indefinite, to audit and determine the correctness of such report. Funds remaining in the Lateral Road Fund of any county, after the payment of said right of way obligations, shall be used by the county for paying the maturing principal, interest, and sinking fund requirements, due by the county in that fiscal year on bonds, warrants, or other evidences of indebtedness which were legally issued by such county or road districts prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads. Payment to be made ratably upon the principal and interest on the maturing road bond obligations of said county for such fiscal years. Any funds remaining in the Lateral Road Fund of

any county after the payment of said principal, interest, and sinking fund requirements due or maturing in that fiscal year on bonds or warrants which were legally issued by such county or road district prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, may be used by the county under direction of the Commissioners Court for any one or all of the following purposes: (a) for the acquisition of right of ways for county lateral roads and for the payment of legal obligations incurred therefor prior to January 2, 1939; (b) for the construction or improvement of county lateral roads; (c) for the purpose of supplementing funds appropriated by the United States Government for Works Progress Administration highway construction, Public Works Administration highway construction and such other grants of Federal funds as may be made available to the counties of this State for county lateral road construction; and (d) for the purposes of cooperating with the State Highway Department and the Federal Government in the construction of farm-to-market roads. Provided that when such funds are used for the construction or improvement of county lateral roads, such construction or improvement shall be made under the supervision of a competent engineer.

After such allocation has been made to the several counties in the State the Board shall in writing notify the Chairman of the Commissioners Court of each county of the amount which has been credited to that county. After receiving said notice, the Commissioners Court shall, within sixty (60) days, notify the Board of the manner in which it has exercised its option as to the one or more specified uses of said money permitted under this Act.

Such money shall be applied pro rata to the payments of the debt service requirements of all issues of lateral road indebtedness of the county and all included defined road districts, in the proportion that the debt service requirements of each issue bears to the aggregate debt service requirements of all issues for that year. When any issue of obligations which will receive aid under this Section is already listed with the Board of County and District Road Indebtedness, the Board shall credit the amount applicable to said issue to the account of said issue in the State Treasury. As to all other issues of obligations, which will receive aid under this Subsection (h), the Commissioners Court of the specific counties affected shall have the right, if so desired, to utilize the facilities of the State Board of County and District Road Indebtedness in paying the amounts of principal and interest on said issues substantially in the manner that payments are affected as to such eligible obligations.

In the event that the funds so received by the county from the Lateral Road Account are in excess of the amount required to meet the principal and interest of its maturing road bond obligations for the next fiscal year, the

Commissioners Court, in that event, may elect to use such excess money allocated to it from the Lateral Road Account, and in such event, it shall notify, in writing, the said Board of its election to make use of said money. Whereupon, said Board shall remit said balance to be utilized for such purpose to the County Treasurer of such county, said money to be deposited by the County Treasurer in accordance with law, and the same shall be utilized by the county, acting through the Commissioners Court, for the construction of lateral roads. Each county may call upon the State Highway Commission to furnish adequate technical and engineering supervision in making surveys, preparing plans and specifications, preparing project proposals and supervising actual construction. The actual cost of such aid in supervision shall be paid by the county as a charge against its project.

In order that maximum benefits may be obtained in the expenditures of the State fund made available to the counties under this Act for the construction of county lateral roads, and so that the counties may have the benefit of widespread competition among contractors in bidding on such projects, such counties may, in their discretion, authorize the State Highway Commission, to receive bids in Austin on all such construction in the same manner as is now provided by law for the award of contracts on State highways.

When any road which shall have been constructed by any county wholly from the County Lateral Road Account shall be designated by the State Highway Commission as a part of the System of Designated State Highways, the designation of such road by the State Highway Commission shall constitute a full and complete discharge of any and all obligations of the State, moral, legal, or implied, for the payment of such highway.

In the event the Commissioners Court elects to co-operate with the Highway Department in the building of, or in the construction of, farm-to-market roads, it shall by proper resolution entered upon its minutes, authorize the State Treasurer to pay such funds to be so used, over to the State Highway Department for use on certain designated projects. Regardless of how the funds allocated to the counties from the Lateral Road Account are used, the County Judge of each county shall file with the Board on or before October first of each year, a verified report showing the manner in which the said funds have been expended, the nature and location of the roads constructed, and such other information as the Board may from time to time require.

<sup>1</sup> Article 6674q-1 et seq.

#### Refunding Obligations

(i) The County Commissioners Court of any county may exercise the authority now conferred by law to issue refunding obligations for the purpose of refunding any eligible debt of the county or of any defined road district;

<sup>5</sup> West's Tex. Stats. & Codes—41

and such refunding obligations, when validly issued, shall be eligible obligations within the meaning of this Act, if said Board of County and District Road Indebtedness shall approve the maturities of said refunding obligations and the rate of interest borne by them. In any instance where in the opinion of said Board the existing maturities of any issue of eligible obligations or any part thereof are such as to give the county or defined road district which issued them an inequitable or disproportionate participation in the moneys coming into the County and Road District Highway Fund in any particular period, said Board, in its discretion, may require said issue or any part thereof to be refunded into refunding obligations bearing such rate of interest and having such maturities as may be satisfactory to the Board, but in no event at a greater rate of interest than that provided in the original issue. And if said county or defined road district shall fail or refuse to effectuate such refunding within a reasonable time to be fixed by said Board, said obligations so required to be refunded, and all other obligations of said county or defined road district shall cease to be eligible for participation in said County and Road District Highway Fund until the requirements of said Board, with respect to refunding, shall be complied with.

The Board of County and District Road Indebtedness is hereby made the refunding agent of each county, and as such agent is directed to co-operate with the Commissioners Court of each county in effecting the necessary refunding of each issue of bonds; the Board shall prepare the necessary refunding orders for the Commissioners Court, prepare the proceedings and act in an advisory and supervisory capacity to the end that the expense of refunding any issue of bonds may be reduced to the minimum. Provided that no commission, bonus, or premium shall be paid by any county or defined road district for the refunding of such obligations, and no County Treasurer shall receive any commission for handling of the funds derived from the refunding of such obligations. All actual expense incurred in the refunding of its eligible indebtedness, including cost of proceedings, printing, legal approval and interest adjustment, shall be chargeable against the money theretofore or thereafter collected from ad valorem taxes, or at the option of the Commissioners Court conducting such refunding, may be paid from any other money under its control and available for the purpose, provided no obligations for such expense items shall be incurred or paid without affirmative approval by said Board.

#### Appropriation of Deposited Moneys

(j) All moneys to be deposited to the credit of the County and Road District Highway Fund from September 1, 1945, to August 31, 1947, both inclusive, are hereby appropriated to said respective counties and defined road districts and shall be received, held, used and ap-

plied by the State Treasurer, as ex-officio Treasurer of said respective counties and defined road districts, for the purposes and uses more specifically set forth in this Act, including the payment of principal, interest and sinking fund requirements on all eligible obligations maturing up to and including August 31, 1947. And each year thereafter until all of such eligible obligations are fully paid, all moneys coming into the credit of the County and Road District Highway Fund with the State Treasurer, and all moneys remaining therein from any previous year shall be received and held by him as ex-officio Treasurer of such counties and defined road districts, and shall first be subject to the appropriation for the payment of interest, principal and sinking funds maturing from time to time on said eligible obligations, and then for the other uses specified and permitted in this Act.

In the event any county, road district, or defined road district has since September 1, 1941, made any payment on eligible bonds, warrants, or other evidence of eligible indebtedness as defined under the terms of this Act, then such county, road district, or defined road district shall be reimbursed by the Board of County and District Road Indebtedness in the amount of the payment so made on such eligible obligations.

#### Issuance of Warrant

(k) As payment of principal and/or interest becomes due upon such eligible obligations, the State Comptroller of Public Accounts shall issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin, Texas, or by remitting to the bank or trust company or other place of payment designated in the particular obligation. Such warrants or voucher claims shall show on their face that the proceeds of the same are to be applied by the paying agent to the payment of certain specified obligations or interest therein described, by giving the name of the county or defined road district by which they were issued, numbers, amounts, and dates of maturities of the obligations and interest to be paid, with instructions to the State Treasurer, paying agent, bank, or trust company to return to the State Comptroller of Public Accounts such obligations and interest coupons when same are paid; and the State Comptroller of Public Accounts shall, upon receipt of said obligations and coupons, credit same on his records and send them, duly cancelled, to the Commissioners Court of the appropriate county, which shall cause to be duly entered a record of such cancellation. In instances wherein counties or defined road districts therein shall have arranged with the Board to pay principal or interest thereon, of outstanding lateral road indebtedness, of the Board, and the State Comptroller of Public Accounts, and the State Treasurer shall follow, insofar as practicable, the procedure prescribed in this sub-section (k) for the payment

of the principal and interest of eligible obligations.

#### Payment of Expenses

(l) Expenses necessary to be incurred in the determination of the indebtedness of the counties and defined road districts of the state, and in the discharge of the duties required for the payment of such obligations, shall be paid from the County and Road District Highway Fund by warrant approved by the Chief Accountant, and one other member of said Board, and the State Comptroller of Public Accounts. The compensation of all employees of said Board shall be fixed by the Legislature. All employees of said Board of County and District Road Indebtedness shall be bonded, the amount of such bond being set by the Board.

#### Forwarding Securities to State Treasurer

(m) All of the securities now on hand in which sinking funds collected for the benefit of outstanding eligible issues are invested, and all funds and securities hereafter acquired for the benefit of the entire outstanding balance of all eligible bond issues, shall be forwarded within thirty (30) days from the effective date of this Act, and thereafter within thirty (30) days of the acquisition of such fund or securities, to the State Treasurer as ex officio County Treasurer of the various counties and defined road districts. Provided that the cash now on hand in the sinking fund created for the benefit of outstanding eligible obligations may also be remitted as above set forth, at the option of such county or defined road district. Any county, the Commissioners Court of which fails or refuses to comply with the provisions of this Act in all things, including the levy, assessment, and collection of a tax, and at a rate sufficient to pay all sums due or to become due, which the state is unable to pay, or to provide each year the proportionate amount of sinking fund required to redeem its outstanding bonds at their maturity, shall not participate in any of the benefits of this Act so long as such county fails or refuses to comply with provisions thereof. The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds, including all future sinking funds acquired in any manner whatsoever, in any eligible obligations of the various political subdivisions of this state which mature within the current biennium in which such securities are purchased; and where there is on hand a sufficient amount of moneys or securities to the credit of any one political subdivision to retire some of its outstanding obligations, whether then due or not, the Board of County and District Road Indebtedness may, if it deems it advisable, purchase and cancel said obligations of such particular political subdivision, irrespective of maturity dates. Provided further, that any county which has selected a depository according to law and in which county such depository has qualified by giving surety bonds or by the deposit of adequate securities of the

kind provided by law, which in the opinion of the Board of County and District Road Indebtedness is ample to cover the county deposits, and which county has not defaulted in the payment of any installment of principal and/or interest on any county bonds for a period of five (5) years next preceding the date of the filing of its application for exemption, and in which county all sinking funds of all bond issues are in excess of the standard required by law, and which county has levied for the current tax year adequate rates in support of outstanding bond issues and warrant as required by the Constitution and Statutes of said state, shall be exempt from the provisions of this sub-section (m) of this Act, and which exemption shall be obtained by such county in the manner and under conditions prescribed by the said Board of County and District Road Indebtedness. Said Board shall have the right to inspect the records of such county at any subsequent date to ascertain whether or not the facts warrant the continuation of the exemption. If at any time, in the opinion of the Board, counties that have been granted exemption under the provisions of this Act shall cease to comply with all the conditions under which the exemption has been granted, the Board shall notify the county to return all securities in which the sinking funds of eligible road bond issues are invested, and the residue in said sinking funds, and to begin immediately forwarding taxes levied and collected for the payment of interest and principal on all eligible road bond issues. Said counties whose exemption has been cancelled by said Board shall be given a period of thirty (30) days in which to comply with the demands of the Board. Provided further, that such counties so exempt shall furnish the Board an annual statement of the condition of the sinking funds of the several eligible road bond issues, together with a financial statement of the county depository. The Board shall have the right to withhold the payment of any maturity on any eligible road bond indebtedness where such county has failed or refused to comply with all the provisions of this Act.

#### Minutes of Board Proceedings

(n) The Board shall keep adequate minutes of its proceedings and semiannually, on or before June 30th and December 31st of each year, shall make itemized reports to each county with respect to the receipt, disbursement, and investment of the funds credited to such county. The Commissioners Court of any county, and/or its accredited representatives shall have the right to inspect the records of said Board and of the State Treasurer, at any reasonable time, for the purpose of making any investigation or audit of the accounts affecting its county.

#### Accounting to Governor

(o) The Board shall, within ninety (90) days after the close of each fiscal year, make a complete accounting for the preceding year to the Governor of this state, showing in such report

its act, investments, changes in investments and sinking fund status of each county and each defined road district, and shall file copies of such report with the President of the Senate and with the Speaker of the House of Representatives.

#### Return of Money to Counties

(p) In the event this Act is repealed, or shall be or become inoperative as to any county or defined road district, then it shall be the duty of the Board to ascertain immediately the amount of moneys and securities remaining on hand with it or with the State Treasurer belonging to the several counties or defined road districts affected, and forthwith to return the same to the County Treasurer of the County entitled thereto, accompanied by an itemized statement of the account of the county or defined road district.

#### Depositories

(q) All funds on hand belonging to, and hereafter credited to, the several counties and defined road districts of the state, shall be considered State Funds, and as such shall be deposited at intervals in the depositories provided for by the state laws and all interest earned on such funds and on the securities in which the sinking funds are invested shall belong to said counties or defined road districts, and shall be credited to them by the State Treasurer as earned and collected.

#### Supplementary Funds

(r) Upon notice from the Board of the amount that such county or defined road district shall be required to pay toward any installment of interest, or maturing principal, the County Treasurer of such county shall, not later than twenty (20) days prior to the maturity date of such interest, principal, or sinking fund requirements, forward to the State Treasurer the amount fixed by the Board as being necessary to supplement the amounts previously placed to the credit of any such county or defined road district by said Board under the provisions of this Act.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 6, (formerly § 7); Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1935, 44th Leg., p. 751, ch. 326, § 1; Acts 1937, 45th Leg., p. 761, ch. 370, § 1; Acts 1937, 45th Leg., p. 1344, ch. 500, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1; Acts 1945, 49th Leg., p. 389, ch. 251, §§ 1, 2; Acts 1947, 50th Leg., p. 539, ch. 319, § 1.]

**Art. 6674q-7a. Repealed by Acts 1937, 45th Leg., p. 761, ch. 370, § 3**

**Art. 6674q-8. Restrictions as to Extending State Credit**

No provision of this Act shall be construed to authorize the giving or lending of the credit of the state to any county or district or to pledge the credit of the state in any manner whatever for the payment of any of the outstanding road indebtedness, herein referred to, of the counties or districts of the state. It is

hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this Act, or any part hereof, to obligate the State of Texas, directly or indirectly or contingently, for the payment of any such obligations, or that the State of Texas should assume the payment of said obligations; and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the moneys hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the state to make money available to any county for the construction of additional lateral roads. The provisions hereof are intended solely to compensate, repay, and reimburse said counties and districts for the aid and assistance they have given to the state in furnishing, advancing and contributing money for building and constructing State Highways.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 8; Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-8a. Bonds of Navigation Districts; Preference Over Other Bonds by Board of County and Road District Bond Indebtedness Unauthorized**

All bonds heretofore issued by navigation districts of this state, which mature on or after January 1, 1933, and insofar as amounts of same were issued for and the proceeds thereof actually expended in the construction of bridges across any stream or streams or any other waterways upon any highway that constituted and comprised a part of the system of Designated State Highways on September 17, 1932, shall hereafter be included within and eligible under the provisions of Chapter 13 of the Acts of the 42nd Legislature of Texas,<sup>1</sup> passed at its Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session, to the extent that the proceeds of the sale of said bonds shall have been actually expended in the construction of such bridges and in such cases the outstanding bonds of said navigation districts in an amount equal to the amount so expended by such navigation districts shall be redeemed under the same conditions as are provided by said Chapter 13, Acts of the 42nd Legislature of Texas, Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session,<sup>1</sup> for the redemption of county and road district bonds.

It is expressly provided that the Board of County and District Road Indebtedness shall not be authorized to give the bonds herein referred to preference over other similar bonds eligible under said Bond Act; and it is further

expressly provided that said Board in determining the amount of bonds eligible for assumption shall take into consideration the amount of the bond money expended for the construction of said bridge, and the balance due on said amount of bonds used in the construction of said bridge, at the effective date of this Act; and in no event shall said Board be authorized to assume in excess of the balance due on the bonds for the said bridge construction at the effective date of this Act.

[Acts 1937, 45th Leg., p. 277, ch. 146, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Article 6674q-1 et seq.

**Art. 6674q-8b. Combined with Art. 6674q-8a**

**Art. 6674q-8c. Lateral Road Account; Punishment for Unauthorized Use**

It shall be unlawful for any County Judge or any County Commissioner, while acting in his official capacity or otherwise, to use any money out of the Lateral Road Account for any purpose except the purposes enumerated in this Act. If any County Judge or any County Commissioner shall knowingly expend or use, or vote for the use of, or agree to expend or use any sum of money accruing to any county in this state from the Lateral Road Account, for any purpose not authorized by this Act, or shall knowingly make any false statement concerning the expenditure of any such money, he shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for not less than two (2) years nor more than five (5) years.

[Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-9. Legislative Policy; State Title to Roads**

If succeeding Legislatures shall continue to carry out the policy herein defined by authorizing a similar appropriation of funds from time to time, (a) then whenever the eligible obligation shall have been fully paid as herein provided, as to or for any county or defined road district according to the provisions of this Act, then, and in that event, the title and possession of all roads, road beds, bridges, and culverts in such county or defined road district, which are included in the system of Designated State Highways, shall automatically vest in fee simple in the State of Texas; in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; and (b) whenever the interest and principal necessary to retire the outstanding indebtedness owed for lateral roads shall have been fully paid as herein provided, as to, or for any county or defined road district, according to the provisions of this Act, then, and in that event, the title of all roads, road beds, bridges, and culverts in such county or defined road district, pertaining to the lateral roads constructed with the proceeds of such indebted-

ness, shall automatically vest in the State of Texas; but the possession thereof shall remain in such county or defined road district, and in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; provided that when the right-of-way, or any part thereof, pertaining either to a State Highway or a lateral road, has been abandoned because of the abandonment of such road for all public purposes, and such right-of-way, or any part thereof, was donated by the owner of the land for right-of-way purposes, then, and in that event, the title to the said right-of-way shall vest in said owner, his heirs or assigns; provided, however, that nothing in this Act shall prevent the State Highway Commission from changing or abandoning any State Highway, and if the Commission shall change or abandon any State Highway in any county, the Commissioners Court of such county shall have the right to assume jurisdiction over such portion of such highway so abandoned by the State Highway Commission. Likewise, the title to additional lateral roads, when constructed, shall vest in the State of Texas. Provided, however, that this Act neither imposes the obligation on, nor confers the right in, the State of Texas, to maintain and lay out any roads except those constituting a part of the designated State Highway System as hereinabove in this Act defined. The obligation to maintain or lay out all other roads, including lateral roads and additional lateral roads as defined in this Act, shall remain undisturbed in the several Commissioners Courts as agents of the state.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 10; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

#### Art. 6674q-10. Partial Invalidity

If any Section, sub-section, paragraph, sentence, clause, or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other portion of this Act or the application of such Section, sub-section, paragraph, sentence, clause, or provision to any other person or situation but this Act shall be construed and enforced as if such invalid provisions had not been contained therein.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 11; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

#### Art. 6674q-11. Omitted by Acts 1939, 46th Leg., p. 582, § 1

#### Art. 6674q-11a. Effect of Act

This Act shall be cumulative of all other valid laws on the subject, but in the event of a conflict between any provision of this Act and any other Act, the provisions of this Act shall prevail.

[Acts 1939, 46th Leg., p. 582, § 1.]

#### Art. 6674q-12. State Treasurer as Ex Officio County Treasurer in Payment of Interest and Sinking Funds

Resolved by the Senate of Texas, the House of Representatives concurring, that it was the intention of the Legislature of the State of Texas in enacting said above named Acts to authorize and empower the Treasurer of the State of Texas to act as ex officio treasurer of such respective county and road districts in the payment of the interest and sinking funds due by the several counties of the State upon such county road bonds which are not eligible to participate in the County and Road District Highway Fund, and to receive from the respective counties the sums of money due by such respective counties for the payment of such interest and sinking funds, and to pay same upon warrants issued by the Comptroller of the State of Texas in the same manner as is provided for the payment of the interest and sinking funds upon the county road bonds which are eligible to participate in the County and Road District Highway Fund in the Acts aforesaid. Nothing herein shall be construed as increasing the liability of the State of Texas for the payment of any interest or sinking funds on any county road bonds not heretofore eligible under the provisions of the Acts aforesaid; the State Treasurer, merely for convenience of such counties, to act as ex officio treasurer in the receiving and payment of the interest and sinking funds on said county road bonds which are not eligible to participate in the County and Road District Highway Fund.

[Acts 1936, 44th Leg., 3rd C.S., p. 2115, S.C.R. No. 4.]

#### Art. 6674q-13. Expenditure of Federal Funds on Roads Not Part of State Highway System

From and after July 1, 1937, all moneys appropriated under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936, (H.R. 11687),<sup>1</sup> for expenditure on roads not on the System of the State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal funds may be matched or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways; the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs, on which the application of Federal funds is prohibited or impractical.

[Acts 1937, 45th Leg., p. 432, ch. 221, § 1.]

<sup>1</sup> Act of June 16, 1936, c. 582, 49 Stat. 1519.

#### Art. 6674q-14. Road District Bonds in Counties of 19,000 to 19,500; Participation in State Highway Fund

All bonds which have been heretofore issued and sold by road districts in counties with a

population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the bonds have been expended in whole or in part upon a highway which was then a part of the designated system of State Highways in Texas, and a part of the proceeds of which has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System of Texas, and where such designated parts of the State Highway System bear different highway numbers, or where one designation is numbered and the other un-numbered, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto,<sup>1</sup> including the re-enactment and extension thereof under and by virtue of the terms and provisions of House Bill No. 463, enacted by the Legislature of Texas, Forty-fifth Regular Session, 1937.<sup>2</sup>

The Board of County and Road District Indebtedness is directed to audit all expenditures of the aforementioned district, and the assumption herein provided for shall extend only to such bonds, the proceeds of which were expended in the construction of the road which has subsequently been designated a State Highway.

[Acts 1937, 45th Leg., p. 901, ch. 437, § 1.]

<sup>1</sup> Articles 6674q-7, 6674q-8.

<sup>2</sup> Article 6674q-7.

**Art. 6674r. Bonds of Road Districts in Certain Counties Entitled to Participate in State Highway Fund Under Certain Conditions**

All bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, according to the last preceding Federal Census, where the proceeds of the sale of the bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto.<sup>1</sup>

[Acts 1937, 45th Leg., p. 829, ch. 406, § 1.]

<sup>1</sup> Articles 6674q-7, 6674q-8.

**Art. 6674s. Workmen's Compensation Insurance for Highway Department Employees**

**Provisions Made for Insurance**

Sec. 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power

to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

**Definitions**

Sec. 2. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Department" whenever used in this law shall be held to mean the State Highway Department of Texas.

2. "Employee" shall mean every person in the service of the State Highway Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the State Highway Department.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this law.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Repealed by Acts 1947, 50th Leg., p. 722, ch. 358, § 1.

8. Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

**General Provisions**

Sec. 3. After the effective date of this law any employee, as defined in this law, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The Department is hereby authorized to be self-insuring and is charged with the administration of this law. The Department shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the employees of the Department, the approximate number of employees, and the estimated amount of pay roll.

The Department shall give notice to all employees that, effective at the time stated in such notice, the Department has provided for payment of insurance.

Employees of the Department shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statuto-

ry causes of action, if any, for injuries resulting in the course of their employment.

#### Injury in Course of Employment

Sec. 4. If an employee of the Department sustains an injury in the course of his employment, he shall be paid compensation by the Department, as hereinafter provided.

#### Willful Intention and Intoxication of Employee as Defenses

Sec. 5. If an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, the Department may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.

#### No Right of Action Against Agents or Employees of Highway Department; Compensation Exempt from Garnishment or Attachment; Assignments Void

Sec. 6. Employees of the Department and parents of minor employees shall have no right of action against the agents, servants, or employees of the Department for damages for personal injuries nor shall representatives and beneficiaries of deceased employees have a right of action against the agents, servants, or employees of the Department for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the Department as is provided in this law. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

#### Adoption of General Workmen's Compensation Laws

Sec. 7. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1, 3, 3a, 3b, 4, 5, 6, 7, 7a, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12c-1, 12c-2, 12d, 12e, 12f, 12g, 12h, 12i, 13, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, of Article 8306, Revised Civil Statutes of Texas, 1925, as amended;

(2) Section 1 of Chapter 248, Acts of the 42nd Legislature, Regular Session, 1931, as last amended by Acts, 1955, 54th Legislature, page 36, Chapter 26, Section 2, codified in Vernon's as Article 8306a, Vernon's Civil Statutes;

(3) Sections 4a, 6a, 11, 12, 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended;

(4) Section 2 of Chapter 261, Acts of the 45th Legislature, 1937, codified in Vernon's as Article 8307b, Vernon's Civil Statutes;

(5) Sections 4 and 5 of Article 8309, Revised Civil Statutes of Texas, 1925, as amended; and

(6) Article 8309a, Revised Civil Statutes of Texas, 1925, as amended.

(b) Provided that whenever in the above adopted sections of Articles 8306, 8306a, 8307, 8307b, 8309 and 8309a of the Revised Civil Statutes of Texas, as amended the words "association," "subscriber," or "employer" or their equivalents appear in such Articles, they shall be construed to and shall mean "the department."

Sec. 8. Repealed by Acts 1969, 61st Leg., p. 2301, ch. 777, § 2, eff. Sept. 1, 1969.

#### Weekly Payments of Compensation

Sec. 9. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

#### Physical Examination; Effect of Refusal to Submit to; Insanitary and Injurious Practices; Procedure

Sec. 10. The Board may require any employee claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the laws of this State. If the employee or the Department requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Department to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

The Department shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Department shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate

in such examination. Provided, when such examination is directed by the Board or the Department, the Department shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this law. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

#### Industrial Accident Board, Authority of; Procedure

Sec. 11. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employee or person suing on account of the death of such employee shall be against the Department. If the final order of the Board is against the Department, then the Department shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the Court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in Court upon request free of charge, with a certified copy of the notice of the Department becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any Court in this State upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against

the Department, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the Department, and the Department shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve (12) per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the Department requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this law, and the Department should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve (12) per cent penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

#### Employees of Subcontractors

Sec. 12. If the Department sublets the whole or any part of the work to be performed or done to any subcontractor, then in the event any employee of such subcontractor, whose name does not appear on the pay roll of the Department, sustains an injury in the course of his employment, he shall be deemed and taken for all purposes of this law not to be an employee as defined in this law. However, in the event that a person leases tractors, trucks, mowing or cutting machinery, or other equipment to the Department, and uses this equipment to perform work under a contract with the Department, then the Department shall

(1) treat the person leasing the equipment as an independent contractor and require him to provide life, health and accident, and disability insurance for himself and any persons employed by him to perform the contract during the time he or his employee are engaged in performing the contract and with such amounts of insurance and coverage as is approved by

the State Board of Insurance as being substantially the same coverage provided for under workmen's compensation insurance;

(2) treat the person leasing the equipment as an employee of the state for purposes of workmen's compensation and require him to provide workmen's compensation insurance for any persons employed by him to perform the contract; in which case the workmen's compensation law applies to such person and his employees regardless of the number of employees; or

(3) treat the person leasing the equipment and any persons employed by him to perform the contract as employees of the state for purposes of workmen's compensation.

#### Records and Reports of Injuries

Sec. 13. The Department shall hereafter keep a record of all injuries fatal or otherwise, sustained by its employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the Department shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex, and occupation of the injured employee and the character of work in which he was engaged at the time of the injury, and shall state the place, date, and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The Department shall be responsible for the submission of the reports in the time specified in this Section.

#### Rules and Regulations; Examining Physicians; Reports as Evidence

Sec. 14. The State Highway Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the State Highway Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the State Highway Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the State Highway Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the State Highway Department a complete transcript of said examination in writing

upon a form to be furnished by the State Highway Department. It shall be the duty of the State Highway Department to preserve as a part of the permanent records of the State Highway Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Industrial Accident Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Industrial Accident Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

#### Physical Examination Prerequisite to Certification as Employee

Sec. 14a. No person shall be certified as an employee of the State Highway Department under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 14 herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned, provided that absence of a physical examination shall not be a bar to recovery.

#### Award as Evidence; Certified Copies of Orders, Awards, Decisions, or Documents

Sec. 15. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any Court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the Department shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

#### Suits to Set Aside Decision of Board; Notice

Sec. 16. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this law, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer

shall be given to the parties and said suit when filed in the Court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said Court.

#### Time of Hearing

Sec. 17. When an injured employee has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured employee is being paid compensation as provided in this law, and the Department is furnishing either hospitalization or medical treatment to such employee, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

#### Percentage of Payroll Set Aside in Account for Payments Under Act

Sec. 18. The Department is hereby authorized to set aside from available appropriations other than itemized appropriations an amount not to exceed three and one-half (3½) per cent of the annual labor pay roll of the Department for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this law.

The amounts so set aside shall be set up in a separate account in the records of the Department, which account shall show the disbursements authorized by this law; provided the amounts so set aside in this account shall not exceed three and one-half (3½) per cent of the annual labor pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

#### Notice of Appeal and Judgment; Penalty

Sec. 19. In every case appealed from the Board to any district or county Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon district and county clerks under this law shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a district or county Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a district or county Court who fails to comply with the provisions of this law shall be guilty of a misdemeanor and upon con-

viction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

#### Partial Invalidity

Sec. 20. If any section, paragraph, or provision of this law be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this law, but the same shall remain in full force and effect.

[Acts 1937, 45th Leg., p. 1352, ch. 502; Acts 1947, 50th Leg., p. 722, ch. 358, §§ 1, 2; Acts 1959, 56th Leg., p. 862, ch. 388, § 1; Acts 1967, 60th Leg., p. 1842, ch. 715, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2301, ch. 777, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd p. 965, ch. 171, § 1, eff. May 13, 1971; Acts 1973, 63rd Leg., p. 195, ch. 88, § 15, eff. Sept. 1, 1973.]

#### Art. 6674s-1. Liability Insurance for Highway Department Employees

Sec. 1. The State Highway Commission shall have the power and authority to insure the officers and employees of the Texas Highway Department from liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the attorney general as to liability.

Sec. 2. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

[Acts 1969, 61st Leg., p. 617, ch. 212, eff. Sept. 1, 1969.]

#### Art. 6674t. Roads Within Institutions, Hospitals and Schools

Sec. 1. The Texas State Highway Department is hereby authorized and empowered, upon request of the Board for Texas State Hospitals and Special Schools or the State Youth Development Council, to enter into agreements or contracts with the Board or with the Council for the construction, maintenance and repair of roads within any of the institutions, hospitals and schools under the control, management or supervision of the Board or the Council.

Sec. 2. The Board for Texas State Hospitals and Special Schools and the State Youth Development Council are hereby authorized to reimburse the appropriate funds of the Texas State Highway Department for the cost of construction and/or maintenance performed under Section 1. Prior to the transfer of any funds, the Board and/or the Council shall notify the Comptroller in writing what funds and what

amounts are to be transferred and direct the Comptroller to make the appropriate transfer.

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares it would have passed the Act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

[Acts 1951, 52nd Leg., p. 309, ch. 187.]

#### Art. 6674t-1. Right-of-Way Easements from State Youth Development Council

In consideration of the benefits accruing to the state from the reconstruction and maintenance of a state highway extending along or across certain state property known as the Gainesville State School for Girls, the State Youth Development Council, acting by its Executive Secretary, is hereby authorized and directed to execute and deliver to the State Highway Commission of the State of Texas a proper instrument conveying thereto a right-of-way easement to the following described tracts of land in Cooke County, Texas, for the reconstruction and maintenance of a highway, the form of such conveyance to be approved by the Attorney General:

Tract 1: Being a part of and out of the A. C. C. Bailey Survey, Abstract 44, Cooke County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at the Northwest corner of a 94.87 acre tract conveyed by P. L. Dickerman and Minnie Dickerman to the State of Texas on May 1, 1915, as recorded in Volume 116, page 185, of the Cooke County Deed Records, said point being in the center of the Gainesville-Woodbine Road;

Thence North 89° 59' East 683 feet along the North line of said 94.87 acre tract to a point for corner, said point being the Southwest corner of a 33 $\frac{2}{3}$  acre tract conveyed by J. M. Lee and wife, and C. H. Lee and wife, to the State of Texas on April 14, 1915, as recorded in Volume 116, page 147, of the Cooke County Deed Records, said point being also on the centerline of Farm Highway 678 at Survey Station 130 + 30;

Thence North 50.0 feet along the West line of said 33 $\frac{2}{3}$  acre tract to a point for corner, said point being in the North right-of-way line of Farm Highway 678;

Thence North 89° 59' East 1667.0 feet along said North right-of-way line to a point in the East line of above mentioned 33 $\frac{2}{3}$  acre tract;

Thence South 100 feet, crossing the Southeast corner of said 33 $\frac{2}{3}$  acre tract and the Northeast corner of said 94.87 acre tract at 50 feet, to a point in the South right-of-way line of said Farm Highway No. 678;

Thence South 89° 59' West 2350 feet along said South right-of-way line to a point in the West line of the above mentioned 94.87 acre tract;

Thence North 50 feet to the place of beginning and containing 4.61 acres of land more or less, of which 1.39 acres is new right-of-way and the balance is in an existing road.

Tract II: Being a strip of land out of the A.C.C. Bailey Survey, Abstract 44, 200 feet long and 30 feet wide on the South side of the proposed location of FM Highway 678, the centerline of said strip being more particularly described as follows:

Beginning at a point in the South line of said highway 50 feet South of Survey Station 144 + 00;

Thence South 0° 01' East 200 feet;

Containing 0.138 acres of land, more or less.

[Acts 1957, 55th Leg., p. 11, ch. 9, § 1.]

#### Art. 6674u. Barricades and Warning Signs; Tampering with or Disregarding

Sec. 1. The following words when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this section as follows:

"Barricade." Every barrier, obstruction, or block placed upon or across any road, street or highway of this State by the State Highway Department, or any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work on said road, street or highway under or by authority of the State Highway Department or any political subdivision of the State, for the purpose of obstructing and preventing the passage of motor vehicles over such street, road or highway during the period of construction or repair to said street, road or highway.

"Warning Sign." Every sign, signal, marking, and device erected or placed upon any street, road or highway barricade, or erected or placed upon any street, road or highway which is under construction or being repaired in any way by the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor doing road, street or highway construction or repair work, for the purpose of regulating, warning or guiding motor vehicular traffic or otherwise stating the conditions under which traffic by motor vehicle may be had upon such street, road or highway. A warning sign shall include, but shall not be limited to, a flagman placed upon any street, road or highway by the State Highway Department or any political subdivision of the State or by any contractor or sub-contractor for the purpose of directing traffic around or upon such street, road or high-

way as is under construction or in the process of being repaired.

Sec. 2. It shall be unlawful for any person to in any way tamper with, move, damage or destroy any barricade placed upon any road, street or highway by the State Highway Department or any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work under or by authority of the State Highway Department or any political subdivision of the State; or for any person to disobey the instructions, signals, warnings or markings of any warning sign placed upon any street, road or highway barricade or placed upon any street, road or highway under construction or being repaired under the provisions and authority of this Act, unless at the time otherwise directed by a police officer. Provided, however, the provisions of this Act shall not apply to employees of the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor or other person whose proper and lawful duties make it necessary for them to go beyond or around any barricade and to enter upon any portion of a street, road or highway which is under construction or in the process of being repaired.

Sec. 3. Any person who shall violate any provision of this Act shall, upon conviction, be fined not less than One (\$1.00) Dollar nor more than Two Hundred (\$200.00) Dollars, and each and every violation shall constitute and be a separate offense.

Sec. 4. In case any section, sentence or clause of this Act shall be declared unconstitutional, invalid, null, void or inoperative, the other sections, sentences, and clauses shall nevertheless remain in full force and effect just as though the section, sentence or clause so declared unconstitutional, invalid, void, null or inoperative was not originally a part hereof. [Acts 1953, 53rd Leg., p. 706, ch. 270.]

#### Art. 6674u-1. Warning Devices on Public Streets and Highways; Damaging or Removing

Sec. 1. In this Act,

(1) "Street or highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public use for purposes of vehicular travel or when under construction or repair and intended for public use for purposes of vehicular travel upon completion, and includes the space above and below the surface of a street used for all proper street purposes or under construction for use;

(2) "Person" means every natural person, firm, copartnership, association, or corporation and/or any officer, agent, independent contractor, employee, servant or trustee thereof;

(3) "Political subdivision" includes every county, municipality, local board, or

other body of this State having authority to authorize the construction or repair of streets, highways or roads under the constitution and laws of this State;

(4) "Contractor" means every person engaged in the construction or repair of any street, highway or road of this State under contract with the state or any political subdivision of the State;

(5) "Public utility" means all telegraph, telephone, water, gas, light and sewage companies or cooperatives, or their contractors, and any other business presently or hereinafter recognized by the Legislature as a public utility.

Sec. 2. (a) No person may damage, remove, deface, carry away, or interfere or tamper with a barricade, flare pot, sign, flasher signal or any other device warning of construction, repair or detour on or adjacent to streets or highways of this State, after the device has been set out by a contractor or by the State or a political subdivision of the State or by a public utility.

(b) Subsection (a) of this section does not apply to any of the following persons acting within the scope and duty of their employment:

(1) an officer, agent, independent contractor, employee, servant, or trustee of the State;

(2) an officer, agent, independent contractor, employee, servant, or trustee of a political subdivision of the State;

(3) a contractor or a public utility.

Sec. 3. A person who violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$1000, or by imprisonment in the county jail for not more than two years or both.

[Acts 1965, 59th Leg., p. 159, ch. 65, eff. Aug. 30, 1965.]

#### Art. 6674v. Turnpike Projects

Construction, Maintenance and Operation Authorized

Sec. 1. To facilitate vehicular traffic throughout the State, to promote the agricultural and industrial development of the State, to assist in effecting traffic safety, to provide for the construction of modern expressways, to provide better connections between highways of the State of Texas and the highway system of adjoining states, including cooperation between states, the Texas Turnpike Authority, hereinafter created, is hereby authorized and empowered to construct, maintain, repair and operate Turnpike Projects (as hereinafter defined), and to issue turnpike bonds of the Texas Turnpike Authority, payable solely from the revenues of such projects.

Turnpike Revenue Bonds

Sec. 2. Turnpike revenue bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of

the faith and credit of the State or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such turnpike revenue bonds shall contain on the face thereof a statement to the effect that neither the State, the Turnpike Authority or any political subdivision of the State shall be obligated to pay the same or the interest thereon except from revenues of the particular project for which they are issued and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The Turnpike Authority shall not be authorized to incur financial obligations which cannot be serviced from tolls or revenues realized from operating its projects as defined in this Act or from moneys provided by this Act.

#### Turnpike Authority; Membership

Sec. 3. There is hereby created an authority to be known as the "Texas Turnpike Authority," hereinafter sometimes referred to as the "Authority." By and in its name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the State of Texas, and the exercise by the Authority of the powers conferred by this Act in the construction, operation, and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of the State.

The Board of Directors of the Authority (hereinafter in this Act sometimes called the "Board") shall be composed of directors, who shall occupy, respectively, places on the Board to be designated as Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. The Directors who will occupy Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointed Directors shall serve staggered terms of six (6) years with the terms of one-third of the members expiring on February 15 of each odd-numbered year. Each Director appointed to fill Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall have been a resident of the State and of the County from which he shall have been appointed for a period of at least one (1) year prior to his appointment.

The members of the Texas State Highway Commission at the time this Act becomes effective are hereby made Directors of said Authority, and if for any reason said Texas State Highway Commission at such time because of vacancies is composed of less than three (3) members, then the person or persons appointed to fill such vacancies are hereby made Directors of said Authority. The Highway Commissioners and their successors in office shall respectively and successively occupy Places 1, 4, and 7 on such Board. Each member of the Texas State Highway Commission shall serve ex officio as a member of the Board of Directors of such Authority. All Directors shall serve until their successors have been duly ap-

pointed and qualified, and vacancies in unexpired terms shall be promptly filled by the Governor.

All members of the Board of Directors shall be eligible for reappointment. All Directors shall have equal status and all Directors shall have a vote. Each member of the Board before entering upon his duties shall take an oath as provided by Section 1 of Article XVI of the Constitution of the State of Texas.

The Board shall elect one of the Directors as chairman and another as vice chairman, and shall elect a secretary and treasurer who need not be a member of the Board. Seven members of the Board shall constitute a quorum and the vote of a majority of the members present at any meeting shall be necessary for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

Before the issuance of any turnpike revenue bonds under the provisions of this Act, each Director shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars (\$25,000) and the secretary and treasurer shall execute a surety bond in the penal sum of Fifty Thousand Dollars (\$50,000), each surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State of Texas as surety and to be approved by the Governor and filed in the office of the Secretary of State. The expense of such bonds shall be paid by the Authority.

Each appointed Director may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and public hearing unless the notice and public hearing are in writing expressly waived.

The members of the Authority shall not be entitled to any additional compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this Act.

The Legislature imposes on any Director, who may be a member of the State Highway Commission the extra duties required hereunder.

#### Definitions

Sec. 4. As used in this Act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "Authority" shall mean the Texas Turnpike Authority, created by Section 3 of this Act, or, if such Authority

shall be abolished, the board, body, authority or commission succeeding to the principal functions thereof or to whom the powers given by this Act to the Authority shall be given by law.

(b) The terms "State Highway Commission" and "State Highway Department" shall mean the agency of the State having general jurisdiction over State highway construction, maintenance, and operation, and if the Commission presently performing such functions should be abolished, the board, commission or body succeeding to its principal functions.

(c) The word "Project" or the words "Turnpike Project" shall mean any express highway or turnpike which the Authority may at any time determine to construct under the provisions of this Act, including its facilities to relieve traffic congestion and to promote safety, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project; provided, that the location of a Project must before final designation, be approved by the State Highway Commission. Provided, however, any "Project" or "Turnpike Project" which the Authority may construct under the authority of this Act shall at all times be deemed a public highway within the meaning of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941,<sup>1</sup> and to that end no motor bus company, common carrier motor carrier, specialized motor carrier, contract carrier or other motor vehicle operation for compensation and hire shall be conducted thereon except in accordance with the terms and provisions of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Acts, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941.

(d) The word "Cost" as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, right-of-ways, property rights, easements and interests acquired by the Authority for such construction, the cost

of all machinery and equipment, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any such Project, administrative expense and such other expense as may be necessary or incident to the construction of the Project, the financing of such construction and the placing of the Project in operation. Any obligation or expense hereafter incurred by the State Highway Commission for and on behalf of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a Project shall be regarded as a part of the cost of such Project and shall be reimbursed to the State Highway Department out of the proceeds of turnpike revenue bonds hereinafter authorized.

(e) The word "owner" shall include all individuals, co-partnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this Act. The term shall comprehend the State, counties, cities, political subdivisions, districts and all public agencies.

(f) The word "highway" shall comprehend any road, highway, farm-to-market road, or street, whether under the supervision of the State, any county, any political subdivision or any city or town.

<sup>1</sup> Articles 911a, 911b.

#### General Grant of Powers and Duties Imposed

Sec. 5. The Authority is hereby authorized, empowered, and it shall be its duty:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To sue and be sued in its own name, plead and be impleaded; provided, however, that any and all actions at law or in equity against the Authority shall be brought in the county where the cause of action arises, and if land is involved, including condemnation proceedings, suit shall be brought in the county where the land is situated;

(d) To construct, maintain, repair and operate Turnpike Projects as hereinabove defined at such locations within the State as may be determined by the Authority subject to approval as to location by the State Highway Commission; provided that the Authority shall have no power to fix, charge, or collect tolls for transit over any existing free public Highway;

(e) To issue turnpike revenue bonds of the Authority payable solely from revenues, including tolls pledged to such bonds, for the purpose of paying all or any part of the cost of a Turnpike Project. Turnpike bonds shall be issued for each separate project;

(f) To fix, revise, and adjust from time to time tolls for transit over each separate Turnpike Project;

(g) To acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act;

(h) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, right-of-ways, property rights, easements and interests, as it may deem necessary for carrying out the provisions of this Act; provided, however, that except for parks and playgrounds and except for any property which may have been theretofore acquired under restrictions and limitations requiring payment of compensation, no compensation shall be paid for public lands, parkways or reservations so taken; and that all public property damaged in carrying out the powers granted by this Act, shall be restored or repaired and placed in its original condition as nearly as practicable; provided further, that the governing body having charge of any such public property is hereby authorized to give its consent to the use of any such property for a Turnpike Project; provided, further, that all property or interest so acquired shall be described in such a manner so as to locate the boundary line of same with reference to lot and block lines and corners of all existing and recorded subdivision properties and to locate the boundary line of other property with reference to survey lines and corners.

(i) To designate the location, and establish, limit and control such points of ingress to and egress from, each Turnpike Project as may be necessary or desirable in the judgment of the Authority and the Texas Highway Department to insure the proper operation and maintenance of such Project, and to prohibit entrance to such Project from any point or points not so designated.

In all cases where county or other public roads are affected or severed, the Authority is hereby empowered and required to move and replace the same, with equal or better facilities; and all expenses and resulting damages, if any, shall be paid by the Authority.

(j) To make and enter into contracts and operating agreements with similar authorities or agencies of other states; to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Act; and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgments, and to fix their compensation; provided, that all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this Act or from revenues; and provided further than no compensation for employees of Authority shall exceed the salary schedule of the State Highway Department for comparable positions and services.

(k) To receive and accept grants for or in aid of the construction of any Turnpike Project, and to receive and accept aid or contributions from any source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(l) To make and enforce rules and regulations not inconsistent with the provision of this Act for use of any such Project;

(m) All contracts of the Authority for the construction, improvement, repair, or maintenance of any turnpike project shall, in so far as applicable, be made and awarded under the same conditions, terms, requirements, and provisions as are now provided for with respect to contracts of the State Highway Department in Sections 8 and 9 of Chapter 186, pages 457, 458, Acts, Thirty-ninth Legislature, 1925, as amended by Chapter 103, page 286, Acts, Forty-third Legislature, First Called Session, 1933, and Sections 10 and 13 of Chapter 186, page 458, Acts, Thirty-ninth Legislature, 1925, codified as Articles 6674h, 6674i, 6674j, and 6674m, Vernon's Civil Statutes, and in the making and awarding of such contracts the Authority shall, in so far as applicable, be under the same duties and responsibilities with respect thereto as are now imposed upon the State Highway Department by the terms and provisions of the Statutes herein enumerated. It is hereby declared to be the intention of the Legislature that the provision of this paragraph shall be mandatory.

(n) Provided, however, that the Authority in this Act created, save and except for the region included within the boundaries of Dallas and Tarrant Counties of this State, shall not be empowered or authorized to process or commence plans for or the construction of any toll road or turnpike over the same route or parts thereof or between the same terminal or interven-

ing cities or towns, or through any counties or regions served by a toll road corporation as hereinafter described, which could in any manner whatsoever be construed as a duplication of the services rendered by a toll road running in the same general directions over the same general route or part thereof or through the same regions or counties of the State which has been planned, commenced or constructed by a toll road corporation chartered prior to April 1, 1953, under the laws of this State which provides in its articles of incorporation, bylaws, or otherwise, that none of the net income or profits, whether realized or unrealized, shall ever inure to the benefit of or be distributed to any private shareholder or any other private person, association or corporation whatsoever, and that, after payment of all indebtedness for the acquisition, construction, maintenance and operation of such toll road, the title of all the assets of said toll road corporation shall be conveyed to the State of Texas or to the county or counties in which such toll road is situated; provided further, however, that such toll road corporation commence the construction of such toll road within a period of eighteen (18) months from the effective date of this Act.

(o) To do all acts and things necessary or appropriate to carry out the powers expressly granted in this Act.

#### Incidental Powers

Sec. 6. The Authority shall have authority to construct grade separations at intersections of Turnpike Projects with railroads and with highways, and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of railroads or such highways shall be paid by the Authority as a part of the cost of such Turnpike Project.

If the Authority shall find it necessary to change the location of any portion of any highway, it shall cause the same to be reconstructed at such location as the Authority and the Texas Highway Department shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such Turnpike Project. No Project shall be instituted for the purpose of being substituted for or taking the place of an existing highway. Each Project shall be essentially an additional facility.

In addition to the foregoing powers, the Authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of mak-

ing surveys, soundings, drillings and examinations as it may deem necessary or appropriate for the purpose of this Act, and such entry shall not be deemed a trespass, nor shall any entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

The Authority also shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "Public Utility Facilities") of any public utility, railroad or pipeline company, or of any person, in, on, along, over or under the Turnpike Project. Whenever the Authority shall determine that it is necessary that any Public Utility Facilities which now are, or hereafter may be, located in, on, along, over or under the Turnpike Project should be relocated in such Project, or should be removed from such Project, or should be carried along or across the Turnpike by grade separation, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal or grade separation, including the cost of installing such facilities in a new location or new locations, and the cost of any land, or any rights, or interest in lands, and any other rights, acquired to accomplish such relocation or removal, and the cost of maintenance of grade separation structures, shall be paid by the Authority as a part of the cost of or cost of operating such Turnpike Project. In case of any such relocation or removal of facilities, the owners or operators of the same, their successors or assigns, may use and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as they had the right to maintain and operate such facilities in their former location or locations. Provided, however, notwithstanding anything contained herein to the contrary, the provisions of House Bill No. 393, Acts, Fifty-first Legislature, 1949, Chapter 228, Page 427,<sup>1</sup> shall apply to the erection, construction, maintenance, and operation of lines and poles owned by corporations organized under the Electric Cooperative Corporation Act of this State,<sup>2</sup> and all other corporations (including River Authorities created by the Legislature of this State) engaged in either the generation, transmission, or distribution of electric energy in Texas and whose operations are subject to the Judicial and Legislative processes of this State, over, under, across, upon and along any Project constructed by the Authority; provided, however, that the Authority shall have the same powers and duties as are delegated the State Highway Commission under the provisions of said House Bill No. 393, Acts, Fifty-

first Legislature, 1949, Chapter 228, Page 427, and further provided that notwithstanding anything contained herein to the contrary, the existing laws of the State of Texas applicable to the use of public roads, streets and waters of the State by telephone and telegraph corporations shall apply also to the erection, construction, maintenance, location and operation of lines, poles and other fixtures by telegraph and telephone corporations over, under, across, upon and along any Project constructed by the Authority.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any Turnpike Project. Provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such Project, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area.

- <sup>1</sup> Article 1436a.  
<sup>2</sup> Article 1528b.

#### Purchase of Property

Sec. 7. The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property rights, right-of-ways, franchises, easements and other interests in lands as it may deem necessary for the construction or operation of any Turnpike Project upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the Authority and the owner thereof, and to take title thereto in the name of the Authority.

The governing body of every county, city, town, political subdivision or public agency is authorized without any form of advertisement to make conveyance of title or rights and easements to any property needed by the Authority to effect its purposes in connection with the construction or operation of a Turnpike Project.

#### Condemnation of Property

Sec. 8. Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated, or is absent, unknown or unable to convey valid title, the Authority is hereby authorized, and empowered to acquire, by the exercise of the power of condemnation and in accordance with and subject to the provisions of any and all existing laws and statutes applicable to the exercise of the power of condemnation of property for public use, any land, property rights, right-of-ways, franchises, easements or other property deemed necessary or appropriate for the construction or the efficient operation of any Turnpike Project or necessary to the restoration of, public or private property damaged or destroyed; provided,

however, the Authority may not condemn any land except such as will be necessary for road and right-of-way purposes. The road and right-of-way purposes for which the Authority may condemn land, shall include the land necessary for access, approach, and interchange roads, but shall not include any supplemental facility for other purposes. Such supplemental facilities must be constructed upon land acquired by purchase and not by condemnation. In any condemnation proceedings the Court having jurisdiction of the suit, action or proceeding, may make such orders as may be just to the Authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the State or the Authority except such as may be paid from the funds provided under the authority of this Act.

In all cases where property of an owner is severed by the Turnpike Project, the Authority shall pay the value of the property acquired and the severance damages, to the property remaining in the owner. Such severance damages shall include those arising from the inaccessibility of one tract to the other. The Authority shall provide and maintain at all times for the owner of such severed land, his employees and representatives, without charge, a passageway over or under the project, provided however that the Authority shall not be required to furnish such a passageway (1) if the owner waives such requirement, or (2) if the original tract or ownership involved is less than eighty acres. The Authority is hereby authorized and empowered to negotiate for, and purchase the land or either tract of the land severed, provided satisfactory terms may be agreed upon with the owner. All severed land acquired by the Authority, as herein provided, shall be sold and disposed of by the Authority within a period of two years after its acquisition.

In addition to any other power granted in this Act, the powers and procedure granted to and available to the State Highway Commission for acquisition of property, are likewise granted to and made available to the Authority, subject to the provisions of this Act.

#### Turnpike Revenue Bonds

Sec. 9. The Authority is hereby authorized to provide by resolution, from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of a Turnpike Project. Each Project shall be financed and built by a separate issue of bonds. The proceeds of no issue of bonds shall be divided between or among two or more projects. The cost of each Project shall be determined and set up as a separate project and undertaking. The principal of and the interest on such bonds shall be payable

solely from the funds herein provided for such payment and from the revenues of the particular project for which such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, not exceeding five (5) per centum per annum, shall mature at such time or times, not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds.

The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by the Chairman of the Authority, or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or printed thereon, and attested by the Secretary and Treasurer of the Authority. Any coupons attached thereto shall bear the facsimile signature of the Chairman of the Authority. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of, and are hereby declared to be and are constituted negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. If the duty of such reconversion is imposed on the Trustee in a Trust Agreement as authorized under Section 11, the substituted coupon bonds need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The Authority may sell such bonds in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interests of the Authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five (5) per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the payment of the Cost of the Turnpike Project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such Cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the Cost of the Turnpike Project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable or definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide without reapproval by the Attorney General, for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Act.

Before the Authority may deliver any bonds issued hereunder to the purchaser thereof, the proceedings authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and approval. If the bonds shall have been duly authorized in accordance with the Constitution and laws of the State and constitute valid and binding obligations of the Authority, according to their tenor and effect, and proper charges against the revenues pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable.

#### Turnpike Revenue Refunding Bonds

Sec. 10. The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding, issued on account of a Project, which shall have been issued under the

provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions or enlargements to the Turnpike Project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this Act in so far as the same may be applicable. Within the discretion of the Authority the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

#### Trust Agreement

Sec. 11. In the discretion of the Authority any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Any such trust agreement may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any Turnpike Project or any part thereof.

No trust agreement shall evidence a pledge of the revenues of any Project to any other purpose than for the payment of the cost of maintaining, repairing and operating the Turnpike Project and the principal of and interest on such bonds as the same shall become due and payable and to create and maintain reserves for such purposes, as prescribed in Section 12 hereof. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the Turnpike Project in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such Turnpike Project. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corpo-

rations. In addition to the foregoing, any such trust agreement may contain such provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the Turnpike Project.

#### Revenues

Sec. 12. The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each Turnpike Project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon gas stations, garages, stores, hotels, restaurants, or for any other purpose except for tracks for railroad or railway use, and except for use by telephone, telegraph, electric light or power lines and to fix the terms, conditions, rents and rates of charges for such use. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the Turnpike Project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such Turnpike Project and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the Turnpike Project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of such bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement.

The revenues and disbursements for and on behalf of each Project shall be kept separately. No revenues of one Project shall be used to pay cost of another Project. The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the

purchase of bonds for cancellation as above provided; shall be applied to the redemption of bonds at the redemption price then applicable.

#### Expenditures for Feasibility Studies

Sec. 12a. Notwithstanding the prohibitions contained in Section 12 or any other provision of this Act, Texas Turnpike Authority shall be authorized subject to the prior approval of the Texas Highway Commission to use any available revenues derived from any Turnpike Project, and to borrow money, and issue interest-bearing evidences of indebtedness or enter into a loan agreement or loan agreements, payable out of, and to pledge or hypothecate any available revenues anticipated to be derived from, the operation of any Turnpike Project, for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of Turnpike Revenue Bonds for the construction of any other Turnpike Project. The funds expended on behalf of any such new project shall be regarded as a part of the cost of such new project, and shall be reimbursed to the project from which such funds were disbursed out of the proceeds of Turnpike Revenue Bonds issued for the construction of any such new project.

#### Trust Funds

Sec. 13. All moneys received pursuant to the authority of this Act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this Act. The resolution authorizing the issuance of bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purpose thereof, subject to such regulations as this Act and such resolution or trust agreement may provide.

#### Remedies

Sec. 14. Any holder of bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this Act or by such trust agreement, or resolution to be performed by the Authority or by any officer thereof, including the charging and collecting of tolls.

#### Exemption From Taxation

Sec. 15. The exercise of the powers granted by this Act will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the

improvement of their health and living conditions, and as the operation and maintenance of Turnpike Projects by the Authority will constitute the performance of essential governmental functions, the Authority will not be required to pay any taxes or assessments upon any Turnpike Project or any property acquired or used by the Authority under the provisions of this Act or upon the income therefrom, and the bonds issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State.

#### Eligibility of Bonds

Sec. 16. All bonds of the Authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, of any and all public funds of cities, towns, villages, counties, school districts and other political subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is the smaller, when accompanied by all unmatured coupons appurtenant thereto.

#### Dallas-Fort Worth Turnpike Project

Sec. 17. The Authority is expressly authorized and required to take immediate steps to process the construction of a Project to be known as "Dallas-Fort Worth Turnpike," and to construct, maintain, repair and operate such Turnpike Project between the cities of Dallas and Fort Worth. The project shall extend from a convenient connecting point in the principal East-West highway artery through the City of Dallas in Dallas County, to a convenient connecting point in the principal East-West highway artery through the City of Fort Worth in Tarrant County, along a route to be approved by the Highway Commission of the State of Texas, to be situated for the greater part of its length between United States Highway No. 80 and State Highway No. 183, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project.

#### Existing Toll Roads as Part of Free Highway System

Sec. 18. The Authority hereby created is authorized, empowered and directed to receive and accept for the State of Texas as a part of

the free highway system thereof any toll road constructed and operated by a toll road corporation as described in Section 5, subsection (n), hereof, subject to the following conditions and requirements:

"1. That at the time of such acceptance such toll road shall be free and clear of any and all encumbrances.

"2. That no compensation whatsoever shall be required to be paid therefor by the State of Texas.

"3. That at the time of such acceptance by the Authority such toll road shall be in good condition and repair to the satisfaction of the State Highway Commission.

"4. That such toll road shall have been constructed and maintained in such a manner as to be equal or superior to the standards of the State Highway Commission.

"5. That in letting the contracts for the construction and maintenance of said road such toll road corporation shall have followed the methods and procedures as are used by the State Highway Commission of Texas in such matters.

"A toll road corporation as described in Section 5, subsection (n) hereof, shall be obligated to make an irrevocable gift of all of its assets to the State of Texas and shall irrevocably bind itself to use all of its net income or profits to retire the indebtedness created for the acquisition, construction, maintenance and operation of such road, and which corporation shall at the time of the acquisition of any real property execute such instruments as may be necessary to convey or transfer such real property to the State of Texas, which instruments shall be deposited in escrow with any banking corporation chartered under the laws of Texas or of the United States with an escrow agreement which shall authorize and empower said escrow agent to deliver such instruments of conveyance and transfer to the Authority herein created when the requirements and conditions set forth above have been met and complied with. The authority herein created is hereby authorized, empowered and directed on behalf of the State of Texas to execute such instruments as may be necessary to complete such escrow agreement.

"The equitable, beneficial and superior title to the property belonging to a corporation described in Section 5, subsection (n) hereof, which is subject to an escrow agreement provided herein shall be vested at all times in the State of Texas and shall constitute public property used for public purposes, subject only to any liens or encumbrances created against said property by such corporation to finance the acquisition, construction, maintenance or operation of such road, and the board of directors of such corporation is hereby autho-

rized and empowered to pledge, mortgage or otherwise encumber any of its properties or revenues, whether realized or unrealized, for such purposes, and the authorities herein created shall be required to execute such instruments of consent and subordination as may be required to give and grant such corporation such rights to pledge, mortgage or otherwise encumber its property for the purposes above set forth and, provided further, that neither the State of Texas nor any of its political subdivisions nor the Authority herein created shall ever be liable in any way for any indebtedness created by such a corporation or for any claim, demand, or obligation of any kind which may arise or be asserted against such a corporation, and that all bonds or other evidences of indebtedness of such corporation shall contain a statement to that effect on the fact thereof."

#### Cessation of Tolls

Sec. 19. When all bonds issued under the provisions of this Act in connection with any Turnpike Project, and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof or for the redemption thereof, shall have been set aside in trust for the benefit of the bondholders, such Project, if then in good condition and repair to the satisfaction of the State Highway Commission, shall become part of the State Highway Commission and shall thereafter be maintained by the State Highway Commission, free of tolls. But if at the time such bonds are so paid or the redemption thereof so provided for, the State Highway Commission determines that the Project is not in such state of repair as justifies its acceptance as a part of the State Highway System, the Authority shall continue to operate the Project as a toll facility, and shall continue the tolls then in effect or revise the tolls so as to provide money sufficient to assure payment of the expense of maintenance and operation, and the making of such repairs and replacements as are necessary to meet the minimum requirements of the State Highway Commission within the shortest practicable time. Any money remaining to the credit of such Project after retirement of all of the bonds issued on its account—shall, upon acceptance of the Project by the State Highway Commission, be delivered by the Authority to the State Highway Commission and shall be held by it as a special reserve fund to assure continued maintenance of the facilities comprising the Project, to be administered under rules and regulations to be prescribed by the State Highway Commission. When the bonds issued to finance a Turnpike Project are fully paid and the Turnpike Project has been accepted by the State Highway Commission as provided for in this Section 19, within one (1) year from date of acceptance of said Project, including all the installations thereon, except-

ing only the road bed and highway sections, the State Highway Department shall advertise for public sale all of said installations which may have been acquired as provided in Section 12 hereof, and shall receive sealed bids therefor. It may reject any or all bids but shall dispose of all such properties within two (2) years after accepting title to the Turnpike Project.

#### Preliminary Expenses

Sec. 20. The State Highway Commission is hereby authorized in its discretion, if and to the extent requested by the Authority, to expend out of any funds available for the purpose, such moneys as may be necessary for the study of a Project and to use its engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as it may deem expedient and all such expenses incurred by the State Highway Commission prior to the issuance of turnpike revenue bonds under the provisions of this Act, shall be paid by the State Highway Commission and charged to such Project, and the State Highway Commission shall keep proper records and accounts showing each amount so charged. Upon the sale of turnpike revenue bonds for any such project, the funds so expended by the State Highway Commission in connection with such Project shall be reimbursed to the State Highway Commission from the proceeds of such bonds.

#### Miscellaneous

Sec. 21. Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities con-

cerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars (\$1000).

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars (\$100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.

On or before the thirty-first day of March in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. In making such report, each project shall be listed and reported separately. Each such report shall set forth a complete operating and financial statement covering its operations for each project during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

#### Additional Method

Sec. 22. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this Act need not comply with the requirements of any other law applicable to the issuance of bonds.

#### Act Liberally Construed

Sec. 23. This Act, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

[Acts 1953, 53rd Leg., p. 967, ch. 410; Acts 1969, 61st Leg., p. 1053, ch. 346, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3411, ch. 1042, §§ 1, 2 eff. June 17, 1971.]

#### Art. 6674v-1. Highway Beautification Act

##### Short Title

Sec. 1. This Act may be cited as the Highway Beautification Act.

## Definitions

Sec. 2. In this Act, unless the context requires a different definition

(A) "Commission" means the Texas Highway Commission;

(B) "Interstate System" means that portion of the national system of interstate and defense highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code;<sup>1</sup>

(C) "Primary System" means that portion of connected main highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code;

(D) "Outdoor Advertising" or "Sign" includes any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, if any part of the advertising or information contents is visible from any place on the main traveled way of the interstate or primary systems;

(E) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles or parts thereof, or iron, steel and other old or scrap ferrous or nonferrous material;

(F) "Automobile Graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts;

(G) "Junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk, for processing scrap metal, or for the maintenance or operation of an automobile graveyard, including garbage dumps and sanitary fills;

(H) "Person" means any person, firm or corporation.

<sup>1</sup> 23 U.S.C.A. § 101 et seq.

## Purpose

Sec. 3. Subject to the availability of State and Federal funds, it is the intent of the Legislature to comply with the Highway Beautification Act of 1965 (Public Law 89-285)<sup>1</sup> as and to the extent that it may be implemented by Congress, provided, however, that this Act shall be and is conditioned upon the provisions of Public Law 89-285 wherein it establishes the formulae of Federal-State matching funds, on the effective date of this Act, for the purpose of complying with the said Federal Public Law; and the Legislature declares that in order to promote the health, safety, welfare, morals, convenience and enjoyment of the traveling public and to protect the public investment

in the interstate and primary highway systems, it is necessary to regulate the erection and maintenance of outdoor advertising and the establishment, operation and maintenance of junkyards and automobile graveyards in areas adjacent to the interstate and primary systems. The landscaping and developing of recreational areas, acquisition of interests in and improvement of strips of land within, adjacent to or within view of the interstate or primary systems, which are necessary for the restoration, preservation and enhancement of scenic beauty and the development of publicly owned and controlled rest and sanitary facilities within or adjacent to the highway right-of-way are all means of protecting and providing for the general welfare of the traveling public and promoting the safety of all citizens utilizing the highways of this State.

<sup>1</sup> 23 U.S.C.A. §§ 131, 136, 319.

## Control of Outdoor Advertising

Sec. 4. (A) No outdoor advertising may be erected or maintained within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way, of the interstate or primary systems, except:

(1) Directional and other official signs authorized by law, including signs pertaining to natural wonders and scenic and historic attractions;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property upon which they are located;

(4) Signs located in areas in which the land use is designated industrial or commercial under authority of law, such areas to be determined from actual land uses and defined by regulations established by the Commission;

(5) Signs located in areas in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with areas designated industrial or commercial, such areas to be determined from actual land uses and defined by regulations established by the Commission;

(6) Signs located on property within the prescribed limits which have as their purpose the protection of life and property;

(B) The Commission may promulgate rules to regulate the orderly and effective display of outdoor advertising consistent with the customary use of outdoor advertising within this State in areas in which the land use is designated industrial or commercial under authority of law and in areas in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with areas designated industrial or commercial, as provided for in Section 4(A) of this Act.

(C) The Commission may enter into agreements with the Secretary of Transportation to regulate the orderly and effective display of outdoor advertising within this State in the areas described in Subsection (B) of this section.

(D) The Commission is authorized to purchase or to acquire by eminent domain signs which are

(1) Lawfully in existence on the interstate or primary systems on the effective date of this Act; or

(2) Lawfully in existence on any highway made a part of the interstate or primary systems after the effective date of this Act.

(E) The Commission shall pay just compensation for

(1) The taking from the owner of sign of all right, title, leasehold and interest in the sign; and

(2) The taking from the owner or, if appropriate, the lessee of the real property on which the sign is located of the right to erect and maintain the sign.

#### Licenses

Sec. 5. (A) No person may erect or maintain a sign within 660 feet of the interstate or primary systems until he has a license issued by the Commission to do so.

(B) The Commission shall issue a license to a person who

(1) Completes the application form specified by the Commission within the time specified by the Commission;

(2) Pays the license fee of \$25; and

(3) Files with the Commission surety bonds in the amount of \$2,500 for each county in the State in which the person erects or maintains outdoor advertising, such bonds to be payable to the Commission to reimburse it for removal costs of a sign the licensee unlawfully erects or maintains; provided, however, that no person shall be required to provide more than \$10,000 in surety bonds to comply with this subdivision.

(C) The Commission may revoke or suspend a license issued under this section if the licensee

(1) Violates a provision of this Act; or

(2) Violates a Commission rule adopted under this Act.

(D) A person whose license is revoked or suspended may appeal the revocation or suspension to a district court in Travis County. The appeal must be taken within 15 days after the Commission's action.

#### Permits

Sec. 6. (A) Before a person with a license may erect or maintain a sign within 660 feet of the interstate or primary systems, he must have a permit for each sign.

(B) The Commission shall promulgate rules specifying

(1) a reasonable fee for each permit;

(2) the time for and manner of applying for a permit and the form of the permit application; and

(3) the information that must be in a permit application.

(C) The Commission shall issue a permit to every person with a license whose license application complies with the rules of the Commission adopted under Section 5 of this Act and whose sign, if erected, would comply with this Act and rules of the Commission adopted under Section 4(B) of this Act.

(D) A permit issued to control the erection and maintenance of outdoor advertising by a political subdivision of this State within the jurisdiction of the political subdivision shall be accepted in lieu of the permit required by this section, provided that such erection and maintenance of outdoor advertising is in compliance with Section 5 of this Act and the rules of the Commission adopted under Section 4(B) of this Act.

(E) All monies received by the Commission under the provisions of this Act shall be deposited in the Treasury of the State and placed in a special fund to be known as the "Texas Highway Beautification Fund" which shall be used by the Commission in the administration of this Act.

#### Exceptions

Sec. 7. Nothing in Sections 5 and 6 of this Act is to be construed to require any person to obtain a license or permit to erect or maintain any sign advertising the sale or lease of the property upon which it is located; nor is any person required to obtain a license or permit to erect or maintain any sign which relates solely to activities conducted on the property upon which the sign is erected or maintained. Nothing in this Act shall apply to any sign or marker giving information about the location of underground electric transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers or waterlines.

#### Official Signs

Sec. 8. The Commission may designate and provide official signs which may be erected and maintained within the right-of-way at appropriate distances from interchanges and appropriate locations on the interstate and primary systems giving specific information of interest to the traveling public, including specific brand names.

#### Control of Junkyards and Automobile Graveyards

Sec. 9. (A) No person shall establish, operate or maintain a junkyard or automobile graveyard any portion of which is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary systems, except

(1) Those screened by natural objects, plantings, fences or other appropriate

means so as not to be visible from the main traveled way of the interstate or primary systems; or

(2) Those located in areas which are zoned or unzoned industrial areas, such areas to be determined from actual land uses and defined by regulations established by the Commission.

(B) The Commission is authorized to screen, if possible, with natural objects, plantings, fences or other appropriate means any junkyard or automobile graveyard lawfully in existence if the junkyard or automobile graveyard is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary systems. The Commission is authorized to acquire areas outside the highway right-of-way so that any junkyard or automobile graveyard may be screened from the main traveled way of the interstate or primary systems.

(C) The Commission is authorized to promulgate rules and regulations governing the location, planting, construction and maintenance of the materials used in screening junkyards and automobile graveyards as required by this Act.

(D) If the Commission determines that screening a junkyard or automobile graveyard is not feasible, the Commission shall pay just compensation to

(1) The owner of the junkyard or automobile graveyard for its relocation, removal or disposal; and

(2) The owner or, if appropriate, the lessee of the real property on which the junkyard or automobile graveyard is located for the taking of the right to erect and maintain a junkyard or automobile graveyard.

(E) The Commission shall compensate only those owners of junkyards or automobile graveyards and those owners or lessees of the real property on which the junkyards or automobile graveyards are located which are

(1) Lawfully in existence on the interstate or primary systems on the effective date of this Act; or

(2) Lawfully in existence on any highway made a part of the interstate or primary systems after the effective date of this Act.

#### Landscaping and Scenic Enhancement

Sec. 10. (A) The Commission is authorized to acquire, improve and maintain strips of land necessary for the restoration, preservation and enhancement of scenic beauty within, adjacent to any federal-aid highway in this State, including the acquisition and development of such rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way as are necessary to accommodate the traveling public.

(B) The interest in any land authorized to be acquired and maintained in this section may be the fee simple or any lesser interest, as de-

termined necessary by the Commission. The acquisition may be by gift, purchase, exchange or condemnation.

#### Powers of Acquisition

Sec. 11. (A) The Commission is authorized to acquire by gift, purchase, exchange or condemnation any land, or interest therein, and any property or property right of any kind or character which it may deem necessary or convenient for the purpose of carrying out the provisions of this Act.

(B) Upon delivery to and acceptance by the Commission of instruments conveying to the State of Texas any interests in lands, property or property rights deemed necessary or convenient by the Commission to effectuate the purposes of this Act, the Commission shall prepare and transmit to the Comptroller of Public Accounts vouchers covering the Commission's costs in acquiring such interests in lands, property or property rights, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the appropriate account covering the State's obligations as evidenced by such vouchers.

(C) Any land owned by the State of Texas or any agency or department thereof shall be controlled and shall be subject to the terms of this Act the same as though such land were in private ownership.

(D) The exercise of the powers of eminent domain authorized by this Act are the same as that authorized by Section 4, Chapter 300, Acts of the 55th Legislature, 1957 (Article 6674w-3, Vernon's Texas Civil Statutes).

#### Recording; Disposal of Surplus Property

Sec. 12. (A) In the implementation of this Act all instruments, conveying land or an interest in land to the State of Texas shall be recorded in the deed records of the county or counties wherein the land is situated. The State shall pay the fees for recording such instruments in the same manner as fees are paid for the recording of highway right-of-way instruments and in accordance with the laws of this State establishing fees to be charged by the county clerk for the recording of such instruments.

(B) Any land or interest in land acquired for the purpose of carrying out the provisions of this Act which becomes surplus and is, in the opinion of the State Highway Commission, no longer needed by the State for the purposes for which it was acquired or for highway purposes shall be disposed of in accordance with the provisions of Chapter 99, Acts of the 42nd Legislature, 1931, as amended, codified as Article 6673a, Vernon's Texas Civil Statutes.

#### Penalty

Sec. 13. Any person who willfully violates any provision of this Act or willfully violates any rule or regulation promulgated by the Commission in accordance with the requirements of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of

not less than \$25 nor more than \$200. Each day of such willfull violation shall constitute a separate offense.

#### Appropriations

Sec. 14. There is hereby appropriated to the Commission from the General Fund of the State of Texas \$100,000.00 to be used by the Commission for the implementation of this Act including but not limited to administrative costs and initial compensation for removal of billboards and the screening or removal of junkyards as provided under this Act. This appropriation shall be effective for such funding through the remainder of the 1971-1972 fiscal year ending August 31, 1972.

#### Severability Clause

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

[Acts 1972, 62nd Leg., 2nd C.S., p. 15, ch. 1, §§ 1 to 15, eff. June 29, 1972.]

### Art. 6674v-2. Dumping Refuse Near Highway

#### Definitions

Sec. 1. The following terms, as herein defined, shall control in the construction and enforcement of this Act:

(a) The term "refuse" shall include garbage, rubbish, and all other decayable and non-decayable waste, including vegetable, animal and fish carcasses, except sewage from all public and private establishments and residences.

(b) The term "garbage" shall include all decayable wastes, including vegetable, animal and fish offal and carcasses of such animals and fish, except sewage and body wastes, but excluding industrial by-products, and shall include all such substances from all public and private establishments and from all residences.

(c) The term "rubbish" shall include all non-decayable wastes, except ashes, from all public and private establishments and from all residences.

(d) The term "junk" shall include all worn out, worthless and discarded material, in general, including, but not limited to, odds and ends, old iron or other metal, glass, paper, cordage or other waste or discarded materials.

(e) The term "public highway" shall mean and include the entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, when any part thereof is opened to the public for vehicular traffic or which is used as a public recreational area and/or

over which the state has legislative jurisdiction under its police power.

#### Unlawful Acts

Sec. 2. A. It shall be unlawful for any municipal corporation, private corporation, firm or person to dump, deposit, or leave any refuse, garbage, rubbish or junk on any public highway in this State, or county roads.

B. It shall be unlawful for any municipal corporation, private corporation, firm or person to dump, deposit, or leave any refuse, garbage, rubbish or junk within or nearer than three hundred (300) yards of any public highway in this State, whether the refuse, garbage, rubbish, or junk being dumped, deposited, or left, or the land upon which refuse, garbage, rubbish or junk is dumped, deposited or left belongs to the person or persons so dumping, depositing or leaving it or not.

C. The provisions of Subsection B of this Section shall not apply when such refuse, garbage, rubbish or junk is processed and treated in accordance with rules and standards promulgated by the State Department of Health.

D. The provisions of this Act shall not affect farmers in the handling of anything necessary in the growing, handling and care of livestock, or the erection, operation and maintenance of any and all such improvements that may be necessary in the handling, threshing and preparation of any and all agricultural products.

E. The State Department of Health shall promulgate rules and standards regulating the processing and treating of refuse, garbage, rubbish or junk dumped, deposited or left within or nearer than three hundred (300) yards of any public highway in this State.

#### Punishment; Injunction; Enforcement

Sec. 3. Any violation of this Act by any person, firm, or private corporation, shall upon conviction, subject the offender to a fine of not less than \$50 and not more than \$400, and each day of any such violation shall be treated as a separate offense. In the event of any threatened or probable violation of this Act by any public corporation, municipality, city, town or village, it shall be the duty of the County or District Attorney in the county in which such violation is threatened, to bring suit for injunction to prevent such threatened or probable violation. Any person affected or to be affected by any such threatened or probable violation shall have the right to enjoin such violation or threatened violation. The enforcement of the remedy hereinabove provided by injunction shall not prevent the enforcement of the other penalties provided in this Act.

#### Repeal

Sec. 4. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

**Liberal Construction**

Sec. 5. This Act and all of the terms and provisions herein shall be liberally construed to effect the purposes set forth herein.

**Partial Invalidity**

Sec. 6. If any provision of this Act or the application thereof to any person or substance shall be held to be invalid, the remainder of this Act and the application of such provisions to other persons or substances shall not be affected thereby.

[Acts 1927, 40th Leg., 1st C.S., p. 153, ch. 53; Acts 1947, 50th Leg., p. 328, ch. 188, § 1; Acts 1957, 55th Leg., p. 480, ch. 230, §§ 1 to 3; Acts 1963, 58th Leg., p. 764, ch. 291, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 1446, ch. 402, § 1, eff. Aug. 30, 1971.]

### 1B. MODERNIZATION OF HIGHWAY FACILITIES; CONTROLLED ACCESS HIGHWAYS

**Saved From Repeal**

*Acts 1967, 60th Leg., p. 730, ch. 306, which amended articles 1436 and 1436a in sections 1 and 2 of the act, provided in section 3 thereof that the act does not amend, repeal or alter Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w through Article 6674w—5, Vernon's Texas Civil Statutes). See note under article 1436a.*

**Art. 6674w. Purpose; Definitions**

**Purposes.** The Legislature finds, determines and declares that the purpose of this Act is to delegate certain additional authority to the State Highway Commission to promote the Public Safety, to facilitate the movement of traffic, to preserve the financial investment of the public in its highways and to promote the National Defense.

**Definitions.** Wherever used in this Act, "Controlled Access Highway" means any designated State Highway within or without the limits of any incorporated city, town or village, whether under the General Laws or by special charter, including Home Rule Charter Cities, to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys or other public or private ways.

Wherever used in this Act, "Person" means any person, individual, individuals, corporation, association, and/or firm.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 1.]

**Art. 6674w-1. Powers of Commission**

1. **Authorization for Modernization of Highway Facilities.** To effectuate the purposes of this Act, the State Highway Commission is empowered to lay out, construct, maintain, and operate a modern State Highway System, with emphasis on the construction of controlled access facilities and to convert, wherever necessary, existing streets, roads and highways into controlled access facilities to modern standards of speed and safety; and, to plan for future

highways. The State Highway Commission is further empowered to lay out, construct, maintain and operate any designated State Highway, now or hereafter constructed, with such control of access thereto as is necessary to facilitate the flow of traffic, and promote the Public Safety and Welfare, in any area of the State, whether in or outside of the limits of any incorporated city, town or village, including Home Rule Cities, and to exercise all of the powers and procedures to it granted by existing laws and this Act for the accomplishment of such purposes and the exercise of such powers and duties; provided, however, that in the case of any project involving the bypassing of or going through any county, city, town, or village, including Home Rule Cities, the State Highway Commission shall afford the opportunity for not less than one (1) public hearing in the locality before an authorized representative of the State Highway Commission, at which persons interested in the development of the project shall have the opportunity for attendance, discussion and inspection of the design and schematic layout presented and filed with the governing body of such county, city, town or village, including Home Rule Cities, at least seven (7) days before the public hearing, by the State Highway Department. Such hearing shall be held not less than three (3) days nor not more than ten (10) days after the publication in the locality of notice of such hearing.

2. **Control of Access.** The State Highway Commission, by proper order entered in its minutes, is hereby authorized and empowered:

(a). To designate any existing or proposed State Highway, of the Designated State Highway System, or any part thereof, as a Controlled Access Highway;

(b). To deny access to or from any State Highway, presently or hereafter designated as such, whether existing, presently being constructed, or hereafter constructed, which may be hereafter duly designated as a Controlled Access Highway, from or to any lands, public, or private, adjacent thereto, and from or to any streets, roads, alleys, highways or any other public or private ways intersecting any such Controlled Access Highway, except at specific points designated by the State Highway Commission; and to close any such public or private way at or near its point of intersection with any such Controlled Access Highway;

(c). To designate points upon any designated Controlled Access Highway, or any part of any such highway, at which access to or from such Controlled Access Highway shall be permitted, whether such Controlled Access Highway includes any existing State Highway or one hereafter constructed and so designated;

(d). To control, restrict, and determine the type and extent of access to be permitted at any such designated point of access;

(e). To erect appropriate protective devices to preserve the utility, integrity, and use of such designated Controlled Access Highway; and,

(f). To modify or repeal any order entered pursuant to the powers herein granted.

Provided, however, that nothing in the foregoing subparagraphs (a) through (f), inclusive, shall be construed to alter the existing rights of any person to compensation for damages suffered as a result of the exercise of such powers by the State Highway Commission under the Constitution and laws of the State of Texas.

Subject to the foregoing limitations any order issued by the State Highway Commission pursuant to such powers shall supersede and be superior to any rule, regulation or ordinance of any department, agency or subdivision of the State or any county, incorporated city, town or village, including Home Rule Cities, in conflict therewith.

No injunction shall be granted to stay or prevent the denial of previously existing access to any State Highway upon the order of the Commission except at the suit of the owner or lessee of real property actually physically abutting on that part of such State Highway to which such access is to be denied pursuant to the Commission's order, and then only in the event that said abutting owner or lessee shall not have released his claim for damages resulting from such denial of access or a condemnation suit shall not have been commenced to ascertain such damages, if any.

Along new Controlled Access State Highway locations, abutting property owners shall not be entitled to access to such new Controlled Access State Highway locations as a matter of right, and any denial of such access shall not be deemed as grounds for special or exemplary damages, except where access to such new Controlled Access State Highway shall have been specifically authorized by the State Highway Commission to or from particular lands abutting upon such new Controlled Access State Highway in connection with the purchase or condemnation of lands or property rights from such abutting owners to be used in such new Controlled Access State Highway location, and the State Highway Commission thereafter denies access to or from such particular abutting lands to such State Highway at the point where such lands actually abut upon such State Highway.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 2.]

#### Art. 6674w-2. Payment Procedure

In addition to all existing procedures and methods authorized for the issuance of warrants by the Comptroller of Public Accounts upon the request of the State Highway Department, the following authority is hereby granted:

Upon presentation of a properly executed deed or deeds, the Comptroller of Public Ac-

counts is hereby authorized to issue a State Warrant on the appropriate account as payment of consideration for such land, estate or interest therein. In the event any owner fails or refuses to execute or deliver an executed deed before payment of the consideration, the Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account in payment of such consideration, which consideration shall be placed in escrow with any National or State Bank, duly authorized to do business within the State of Texas, which is located in the county of the residence of the owner, the county wherein the land is situated, or in case no such banking facility is available, then in the adjoining county or the nearest available banking facility, to be delivered to the owner upon receipt of the duly and properly executed deed or deeds. In the event the State Highway Department acquires any property through the exercise of the power of Eminent Domain, the Comptroller of Public Accounts is hereby authorized to issue such warrants as the judgment of the Court may decree, as well as such warrants necessary to be deposited into the Court to entitle the State Highway Department, in the name of the State of Texas, to take possession of such property, as the law may provide.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 3.]

#### Art. 6674w-3. Acquisition of Property

In addition to other powers conferred by law, the following are added, to wit:

1. Powers of Purchase and Condemnation for Highway Purposes. (a) Any land in fee simple or any lesser estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress and reservation rights in land which restrict or prohibit the adding of new, or addition to or modification of existing improvements on such land, or subdividing the same; and any timber, earth, stone, gravel, or other material; which the State Highway Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the State Highway Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; storing materials and equipment used in the construction and maintenance of State Highways; constructing and operating warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of State Highways; laying out, construction, and maintenance of roadside parks; and any

other purpose related to the laying out, construction, improvement, maintenance, beautification, preservation and operation of State Highways, may be purchased by the State Highway Commission in the name of the State of Texas, on such terms and conditions and in such manner as the Highway Commission may deem proper.

(b) Any land or any estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdividing or resubdividing same; and any timber, earth, stone, gravel, or other material; which the State Highway Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the State Highway Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; and any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways, may be acquired by the exercise of the power of Eminent Domain by the State Highway Department in the name of the State of Texas in the manner hereinafter provided.

The purchase or power of Eminent Domain being hereby authorized is granted regardless of the location of any such land, property rights, or materials to be acquired, whether within or without the confines of any incorporated city, town or village, whether same are incorporated under general or special laws, including Home Rule Cities.

In the prosecution of any condemnation suit brought by the State Highway Commission in the name of the State of Texas for the acquisition of property pursuant to the powers granted in this Act, the Attorney General, at the request of the State Highway Commission, or, at the Attorney General's direction, the applicable County or District Attorney or Criminal District Attorney, shall bring and prosecute the suit in the name of the State of Texas and the venue of any such suit shall be in the county in which the property or a part thereof is situated.

In the exercise of the powers of Eminent Domain herein conferred, the State Highway Department shall be subject to the laws and procedures prescribed by Title 52,

Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as said Articles or said Title have been or may be from time to time amended, and shall be entitled to condemn the fee or such lesser estate or interest as it may specify in any statement or petition in any condemnation proceeding filed by it pursuant to such powers; provided however, that any statement or petition in condemnation brought by the State Highway Department pursuant hereto shall exclude from the estate sought to be condemned all the oil, gas and sulphur which can be removed from beneath the land condemned without any right whatever remaining to the owners of such oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same; and further provided, that none of the powers granted herein shall be a grant to the State Highway Commission for the purpose of condemning property which is used and dedicated for cemetery purposes pursuant to Articles 912a-10 et seq., Vernon's Revised Civil Statutes of Texas.

2. State and Other Public Lands. The governing body of every county, city, town, village, political subdivision or public agency is hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the State Highway Commission to effect its purposes in connection with the construction or operation of the State Highway System.

Whether purchased or condemned by the State Highway Commission, the lands, property rights and materials which are purchased or condemned may also include those belonging to the public, whether under the jurisdiction of the State or any department or agency thereof, county, city, town, village, including Home Rule Cities, or other entity or subdivision thereof.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the State Highway Commission to be necessary for the construction or operation of any State Highway; provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such State Highway, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area. The State Highway Commission shall advise, and make arrangements with, the State Department or agency having jurisdiction over such lands to accomplish such necessary purposes. Any such State

Department or agency is hereby directed to cooperate with the State Highway Department in this connection, and as to any such department or agency not expressly authorized to act through some designated representatives, express authority is hereby granted to such department or agency to do whatever acts are necessary hereunder by and through the Chairman of its Board, Department Head, or Executive Director, whether appointed or elected, whichever may be appropriate.

If the land, property rights, or material to be acquired by the State Highway Department are of such a nature that its acquisition under the provisions of this Act will deprive any such department or agency of the State of a thing of value to such department or agency in the exercise of its lawful functions, then adequate compensation therefor shall be made, based upon vouchers drawn for this purpose payable to the furnishing department or agency. Payments received by the furnishing department or agency shall be credited to that department's or agency's current appropriation items or accounts from which the expenditures of that character were originally made, or if no such items or accounts from which the expenditures of that character were originally made, or if no such item or account exists, then to an account of such department or agency determined to be appropriate thereto by the Comptroller of Public Accounts.

In the event, but only in the event, the Highway Department and such other department or agency are unable to agree upon adequate compensation, then the Board of Control shall determine the fair, equitable and realistic compensation to be paid.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 4.]

#### Art. 6674w-4. Relocation of Utility Facilities

Whenever the relocation of any utility facilities is necessitated by the improvement of any highway in this State which has been or may hereafter be established by appropriate authority according to law as a part of the National System of Interstate and Defense Highways, including extensions thereof within urban areas, such relocation shall be made by the utility at the cost and expense of the State of Texas provided that such relocation is eligible for Federal participation. Reimbursement of the cost of relocation of such facilities shall be made from the State Highway Fund to the utility owning such facilities, anything contained in any other provision of law or in any permit, or agreement or franchise issued or entered into by any department, commission or political subdivision of this State to the contrary notwithstanding. The term "utility" includes publicly, privately, and cooperatively owned utilities engaged in furnishing telephone, telegraph, communications, electric, gas,

heating, water, railroad, storm sewer, sanitary sewer or pipeline service. The term "cost of relocation" includes the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility, and otherwise as may be fixed by regulations for Federal cost participation. It is further provided that by agreement with the affected utility the State Highway Department may relocate such utility facility in accordance with the provisions hereof.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 4A.]

#### Art. 6674w-4a. Repealed by Acts 1971, 62nd Leg., p. 1212, ch. 293, § 6, eff. July 1, 1971

The repealed article provided for payment by the state of costs of relocating utility facilities and of street improvements necessitated by highway construction, and was derived from Acts 1957, 55th Leg., p. 724, ch. 300, § 4B, as added by Acts 1971, 62nd Leg., p. 1204, ch. 292, art. 5, § 5.

#### Art. 6674w-5. Additional Methods and Precedence of Act in Cases of Conflict

The powers, authority, jurisdiction and procedures granted to the State Highway Department and State Highway Commission in the foregoing Sections of this Act shall be deemed to provide additional powers, authority, jurisdiction, and procedures to those now existing and conferred by the laws of the State of Texas upon the State Highway Department and State Highway Commission and shall not be regarded as in derogation of any powers, authority, jurisdiction, or procedures now existing under the laws of Texas, except that restrictions placed upon the powers, authority, jurisdiction or procedures of the State Highway Department and State Highway Commission by other laws, which are in derogation of, or inconsistent with the powers, authority, jurisdiction and procedures prescribed in the foregoing Sections of this Act or which would tend to hamper or limit the State Highway Department and State Highway Commission in the lawful execution of the powers and authority granted by this Act for the proper accomplishment of its purposes, shall be deemed to have been superseded by the provisions hereof, and, to the extent that any other law is in conflict with or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective.

The powers granted to the State Highway Department and State Highway Commission by this Act to perform acts and exercise powers within the limits of counties, incorporated cities, towns and villages, including Home Rule Cities, may be exercised without the consent or agreement of any such county, city, town or village, including Home Rule Cities, after complying with Subsection 1 of Section 2 hereof, and whenever the State Highway Department or the State Highway Commission performs any act or exercises any power within the limits of any county, incorporated city, town or village, including Home Rule Cities, as authorized in

this Act, such act or exercise of power shall qualify and render inexclusive the dominion of such counties, cities, towns or villages, including Home Rule Cities, with respect to the specific streets, alleys, and other public ways affected by such act or exercises of power, but only to the specific extent to which such act or the exercise of such power affects such streets, alleys and other public ways and their use.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 5.]

## 2. REGULATION OF VEHICLES

**Art. 6675. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

**Art. 6675a-1. Definitions of Terms**

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

(a) "Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle, as herein defined, that is self-propelled.

(c) "Motor Cycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground. Motor-assisted bicycles, as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes),<sup>1</sup> are treated as if they were motorcycles for registration purposes.

(d) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm-tractor" means every motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(f) "Road-tractor" means every motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.

(g) "Trailer" means every vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(h) "Semi-trailer" means vehicles of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(i) "Commercial Motor Vehicles" means any motor vehicle (other than a motorcycle or passenger car) designed or used pri-

marily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails.

(j) "Passenger Car" means any motor vehicle other than a motor cycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons.

(k) "Department" means the State Highway Department or its duly authorized officers or agents.

(l) "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

(m) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.

(n) "Motor Bus" shall include every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns.

(o) "Farm-trailer" means every "trailer" as defined in Subsection (g) herein, designed and used primarily as a farm vehicle.

(p) "Farm-semi-trailer" means every semi-trailer as defined in Subsection (h) herein, designed and used primarily as a farm vehicle.

(q) By "operated or moved temporarily upon the highways" is meant the operation or conveying between different farms, between a place of supply or storage to farms and return, or from an owner's farm to the place where his farm produce is prepared for market or where same is actually marketed and return.

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, but shall not include any passenger car or truck.

(s) "Street or suburban bus" shall include every vehicle, except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively within the limits of cities and towns or suburban additions to such cities or towns.

(t) "Fertilizer trailer" means every "trailer" as defined in Subsection (g)

herein, designed and used solely to transport fertilizer from the place of supply or storage to the farm.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 1; Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, §§ 1, 2; Acts 1947, 50th Leg., p. 1007, ch. 425, § 1; Acts 1947, 50th Leg., p. 1013, ch. 431, § 1; Acts 1963, 58th Leg., p. 119, ch. 70, §§ 1, 2, eff. April 24, 1963; Acts 1973, 63rd Leg., p. 1677, ch. 607, § 3, eff. Aug. 27, 1973.]

<sup>1</sup> See article 6701d, § 2(n).

#### Art. 6675a-2. Registration

(a). Every owner of a motor vehicle, trailer or semitrailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; provided, that where a public highway separates lands under the dominion or control of the owner, the operation of such a motor vehicle by such owner, his agent or employee, across such highway shall not constitute a use of such motor vehicle upon a public highway of this State.

(b). Owners of farm tractors, farm trailers and farm semitrailers with a gross weight not exceeding four thousand (4,000) pounds, and implements of husbandry operated or moved temporarily upon the highways shall not be required to register such farm tractors, farm trailers, farm semitrailers and implements of husbandry.

(c). Owners of farm trailers and farm semitrailers with a gross weight exceeding four thousand (4,000) pounds but not exceeding fifteen thousand (15,000) pounds and used solely to transport their own seasonally harvested agricultural products and livestock from the place of production to the place of process, market or storage thereof, or farm supplies from the place of loading to the farm, and owners of machinery used solely for the purpose of drilling water wells or construction machinery (not designed for the transportation of persons or property on the public highways), may operate or move such vehicles temporarily upon the highways without the payment of the regular registration fees as prescribed by law, provided the owners of such farm trailers and semitrailers and machinery secure for a fee of five dollars (\$5) for each year or portion thereof a distinguishing license plate from the State Highway Department through the County Tax Collector upon forms prescribed and furnished by the department. Such vehicles shall be exempt from the inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.

(c-1). Repealed by Acts 1972, 62nd Leg., 4th C.S., p. 17, ch. 2, § 3.

(d). As used in this Section, the term "gross weight" means the combined weight of

the trailer or semitrailer and the weight of the load actually carried on the highway.

(e). The exemptions from registration under Subsection (b) of this Act and from regular fees under Subsections (c) and (c-1) of this Act apply to farm trailers and farm semitrailers owned by cotton gins and used solely for supplying, without charge, such farm trailers and farm semitrailers to farmers to haul agricultural products from the place of production to the place of process, market, or storage of the agricultural products.

(e-1). The exemptions from registration under Subsection (b) hereof and from regular fees under Subsection (c) hereof shall apply to fertilizer trailers used solely to transport fertilizer, without charge, between a place of supply or storage to farms and return, and also shall apply to trailers hauling cotton seed, without charge, between place of supply or storage to farms or place of process and return.

(f) The exemptions from registration under Subsection (b) hereof and from regular fees under Subsection (c) hereof, shall not apply to any farm trailer or semitrailer:

- (1) When the same is used for hire;
- (2) When the vehicle has steel or metal tires operating in contact with the roadway;
- (3) When not equipped with an adequate hitch pinned or locked so that it will remain securely engaged to the towing vehicle while in motion; or
- (4) Which is not operated and equipped in conformity with all other provisions of the law.

(g). Any vehicle exempt from registration under Subsection (b) hereof or from regular fees under Subsection (c) hereof and operated and moved upon the public highways of this State in violation of this Section shall be deemed to be operated or moved unregistered and shall immediately be subject to the regular registration fees and penalties as prescribed by law.

(h). (1) Owners of truck tractors, semitrailers, or low-boy trailers used exclusively in the transporting on the highways of their own soil conservation machinery or equipment used in clearing land, terracing, building farm ponds, levies or ditches may register, at a reduced license fee, not more than one such truck or truck tractor, and one semitrailer or low-boy trailer, the license fee for which shall be fifty per cent (50%) of the amount usually charged for such a vehicle having the same gross weight; provided that such owner shall not be eligible for the reduced fee unless he submits along with his application for registration: (a) an affidavit that the vehicle is to be used only for the stated purposes, and (b) a certification by the County Agricultural Stabilization and Conservation Committee that the applicant has been approved as a vendor of conservation services or materials.

(2) The registration certificate issued for such vehicle shall clearly indicate the nature of the operation for which such vehicle shall be used and the registration shall be carried at all times in or on the vehicle in such a manner as to permit ready inspection.

(3) Any vehicle exempt from regular fees under this Subsection and operated and moved upon the public highways of this State in violation of this Subsection shall be deemed to be operated or moved unregistered and shall immediately be subject to the regular registration fees and penalties prescribed by law.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 2; Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 2; Acts 1941, 47th Leg., p. 144, ch. 110, § 3; Acts 1953, 53rd Leg., p. 798, ch. 324, § 1; Acts 1957, 55th Leg., p. 233, ch. 111, § 1; Acts 1961, 57th Leg., p. 554, ch. 259, § 1, eff. Aug. 21, 1961; Acts 1962, 57th Leg., 3rd C.S., p. 44, ch. 15, § 1, eff. Feb. 1, 1962; Acts 1963, 58th Leg., p. 119, ch. 70, § 3, eff. April 24, 1963; Acts 1963, 58th Leg., p. 1350, ch. 512, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 61, ch. 21, §§ 1, 2; Acts 1972, 62nd Leg., 4th C.S., p. 16, ch. 2, §§ 1 to 3 eff. Oct. 17, 1972.]

<sup>1</sup> Article 6701d, §§ 140, 141.

Section 2 of the amendatory Act of 1957 repealed all conflicting laws and parts of laws. Section 3 provided: "If any word, phrase, sentence, paragraph or provision of this Act is declared unconstitutional, it is the intention of the Legislature that the remaining provisions thereof shall be effective, and that such remaining portions shall remain in full force and effect."

#### Art. 6675a-2a. Repealed by Acts 1947, 50th Leg., p. 347, ch. 195, § 1

This article, derived from Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 2a, related to exception from penalty. The emergency section of the repealing act declared that it was meaningless and was causing confusion.

#### Art. 6675a-3. Application for Registration

(a) Application for the registration of a vehicle required to be registered hereunder shall be made on a form furnished by the Department. Each such application shall be signed by the owner of the vehicle, and shall give his name and address in full, and shall contain a brief description of the vehicle to be registered. The description, in case of a new motor vehicle, shall include: the trade name of the vehicle; the year model; the style, type of body and the weight, if a passenger car, or the net carrying capacity and gross weight if a commercial motor vehicle; the motor number; the date of sale by manufacturer or dealer to the applicant. The application shall contain such other information as may be required by the Department.

(b) It is expressly provided that the owner of a vehicle previously registered in any State for the preceding or current year may, in lieu of filing an application as hereinbefore directed, present the license receipt and transfer receipts, if any, issued for the registration or transfer of the vehicle for the preceding calendar year, and the receipt or receipts shall be accepted by the County Tax Collector as an application for the renewal of the registration of the vehicle, provided the receipts show that the applicant is the rightful owner thereof. Provided, however, that if an owner or a claimed owner offering to register a vehicle has lost or

misplaced the registration receipt or transfer, then upon his furnishing satisfactory evidence to the Tax Collector by affidavit or otherwise that he is the real owner of the vehicle, it shall become the duty of the Tax Collector to issue him license therefor. It shall be the duty of the Tax Collector to date each registration receipt issued for the vehicle the same date that application is made for registration of such vehicle.

(c) Owners of motor vehicles, trailers and semi-trailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa of this Act<sup>1</sup> to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as provided in Section 3-aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon.

(d) Owners of commercial motor vehicles, truck-tractors, trailers and semitrailers which are the property of and used exclusively by non-profit disaster relief organizations and are used solely for emergencies shall apply to the Department as provided in Section 2 of this Act (compiled as Article 6675a-3aa of Vernon's Texas Civil Statutes) to register all such vehicles, but shall not be required to pay the registration fees herein, but shall pay a fee of Five Dollars (\$5) provided that affidavit shall be made at the time of registration by the owner of said vehicle that said vehicle is used exclusively for emergencies; provided further that such owner shall supply the Department with a reasonable description of the vehicle and the emergency equipment contained therein; provided further that each commercial motor vehicle and truck-tractor displays the name of the organization on each front door; provided further that if said vehicle is used for any purpose other than emergency usage, then such vehicle shall not be exempted under this Section at any future time. Affidavit of the sheriff of the county in which said vehicle is registered that said vehicle has not been used for any purpose except emergency usage shall be required before said vehicle shall be so licensed. Provided, however, that each vehicle

so licensed shall be furnished an appropriate plate or tag indicating its status, which shall be displayed at all times.

(e) Owners of motor vehicles used in the conduct of consular affairs in this State by the representatives of any foreign government which maintains friendly relations with the United States shall apply to the Department annually to register the vehicles as provided by law. If at the time of registration, an authorized representative of the foreign government concerned executes an affidavit that the vehicle is used in this State in the conduct of the government's consular affairs, the owner may register one vehicle for each official representative in the State without paying the required registration fee.

(f) Application shall be made for the registration of a new vehicle for the unexpired portion of the year in which it is acquired before it is operated on the public highways; except that a new vehicle may be operated temporarily by a dealer under the dealer's license number or by its purchaser under a special dealer card-board number, as provided in Chapter 211, General and Special Laws of the Regular Session of the Fortieth Legislature, as amended.<sup>2</sup> The year for the purpose of registration of motor vehicles shall be April 1st to March 31st of the next succeeding calendar year, and may be referred to as the "Motor Vehicle Registration Year"; and "current year" where used in the statutes relating to payment of registration fees shall mean that Vehicle Registration Year. Application for the renewal of registration of a vehicle shall be made not later than April 1st of such year.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 1; Acts 1935, 44th Leg., p. 129, ch. 51, § 1; Acts 1955, 54th Leg., p. 749, ch. 269, § 1; Acts 1961, 57th Leg., p. 666, ch. 307, § 1; Acts 1965, 59th Leg., p. 976, ch. 471, § 1, eff. Aug. 30, 1965.]

<sup>1</sup> Article 6675a-3aa.

<sup>2</sup> Article 6866.

Section 2 of Acts 1935, 44th Leg., p. 129, ch. 51, repealed all laws and parts of laws in conflict with the Act.

Section 2 of the 1961 amendatory act was a partial invalidity clause, and section 3 repealed conflicting laws and parts of laws to the extent of the conflict.

**Art. 6675a-3a. Delinquency**

The payment of the license fee prescribed herein for any vehicle shall become delinquent immediately upon the use of said vehicle on any public highway without said fee having been paid in accordance with this Act.<sup>1</sup> In the event the payment of any such fee has become delinquent on any such vehicle, no license or license number plates shall be issued therefor by any County Tax Collector unless the owner of said vehicle pay an additional charge equal to twenty (20%) per cent of the total amount of said prescribed fee.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3a.]

<sup>1</sup> Arts. 6675a-1 to 6675a-14, 6675a-16a.

**Art. 6675a-3aa. Specially Designated Plates for Exempt Vehicles**

(a) Before the issuance or delivery of a license plate or plates to an owner of a vehicle that is exempt by law from the payment of registration fees, the application shall have the approval of the State Highway Department, and if it appears that the vehicle was transferred to any such owner or purported owner for the sole purpose of evading the payment of registration fees, or that the transfer was not made in good faith, or that the vehicle is not being used in accordance with the exemption requirements, such shall not be issued. If after the issuance of such plates, the vehicle ceases to be owned and operated by such owner, or to be used in accordance with the exemption requirements, then the license shall be revoked and the plates may be recalled and taken into possession by the Department.

(b) The Department may provide for issuance of specially designated plates to those exempt by law. With respect to vehicles used in the conduct of consular affairs, the Department shall provide specially designated plates on which the words "Consular Official" prominently appear.

(c) Specially designated plates are not issued annually but, once issued, remain on the vehicle until (1) it is no longer owned and operated by those exempt by law or (2) the plates are mutilated, lost, or stolen. The plates and registration receipts of a vehicle no longer owned and operated by the registered owner, or no longer used for an exempt purpose, shall be forwarded to the Department for cancellation.

(d) The Department may provide rules and regulations for the issuance of exempt license plates.

(e) It shall be unlawful for any person to operate a vehicle after the license has been revoked, and any such person shall be liable for the penalties prescribed for the failure to register a vehicle as provided by law when it is being operated upon the public highways.

[Acts 1931, 42nd Leg., p. 14, ch. 14, § 1; Acts 1947, 50th Leg., p. 249, ch. 145, § 1; Acts 1955, 54th Leg., p. 749, ch. 269, § 2; Acts 1965, 59th Leg., p. 976, ch. 471, § 2.]

Section 2 of the Act of 1947 provided: "If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional."

Section 3 repealed all conflicting laws or parts of laws.

**Art. 6675a-3b. Repealed by Acts 1937, 45th Leg., p. 1324, ch. 489, § 1**

This article, derived from Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3b, added by Acts 1931, 42nd Leg., p. 215, ch. 127, § 1 related to refunds on vehicles destroyed or demolished.

Section 2 of the Act declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 6675a-3c. Expired**

This article, derived from Acts 1933, 43rd Leg., p. 7, ch. 5, relating to extension of time for payment of motor vehicle registration fees, is omitted as having accomplished its purpose and expired.

**Art. 6675a-3d. Expired**

This article, derived from Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 3, extending use of 1934 motor vehicle registration or license plates to March 31, 1935, is omitted as having accomplished its purpose and expired.

**Art. 6675a-3e. Operation of Motor Vehicles without License Number Plates**

Secs. 1 to 4. [See note following this article.]

**Violation a Misdemeanor; Dealers; Purchase of Plates in February and March**

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State any time during any month of a motor vehicle registration year without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration year or have been validated by the attachment of a symbol, tab, or other device for the current registration year, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration year for which they are issued upon the motor vehicle for which they are issued.

**Bribery of Commissioners' Court**

Sec. 5a. Any person who shall directly or indirectly enter into any agreement with a Commissioners' Court of any county in the State of Texas, or any officer or agent of said Court or county, that he will register or cause to be registered any motor vehicle, trailer or semi-trailer, in said county in consideration of the use by said county of the funds derived from said registration in the purchase of any property of any kind or character, or in consideration of anything or any act to be done or performed by the Commissioners' Court, or any of its agents or officers or any county officer, shall be guilty of a bribery and shall be subject to the same penalty as provided by law for the offense of bribery. The registration of each separate vehicle shall constitute a separate offense. The agreement and/or conspiracy to register shall constitute a separate offense. Any person, firm or corporation who shall make agreements as provided herein, or seek to make such agreements, shall be restrained by injunction by the county or district attorney of the county in which said motor vehicle is regis-

tered, or upon application of the Attorney General of the State of Texas.

**Road-Tractors, Motorcycles, Trailers, Etc.**

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State any time during any month of a motor vehicle registration year without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current year, or validated by the attachment of a symbol, tab, or other device for the current registration year, shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3 hereof.<sup>1</sup>

<sup>1</sup> Articles 6675a-3, 6675a-4, 6675a-3d.

**Operation With Old License Plates**

Sec. 7. Any person operating any motor vehicle, trailer or semi-trailer upon the highways of this State on and after April 1st of any motor vehicle registration year with a license plate or plates for any preceding year which have not been validated by the attachment of a symbol, tab, or other device for the current registration year, shall be deemed guilty of a misdemeanor.

**Penalty**

Sec. 8. Any person convicted of a misdemeanor for violation of Section 5, Section 6 or Section 7 of this Act shall be fined in any sum not exceeding Two Hundred Dollars (\$200.00).

[Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3; Acts 1935, 44th Leg., p. 63, ch. 21, § 1; Acts 1947, 50th Leg., p. 451, ch. 254, § 1; Acts 1973, 63rd Leg., p. 1612, ch. 578, §§ 3, 4, eff. Aug. 27, 1973.]

Sections 1 and 2 of the 1934 Act amended arts. 6675a-3 and 6675a-4; § 3 was classified as art. 6675a-3l (expired); and § 4 thereof repealed Penal Code art. 307a, providing that convictions and prosecutions for violations of said article committed before April 1, 1934, shall not be affected by the repeal.

**Art. 6675a-4. Registration Dates**

(a) The registration year for passenger cars shall consist of calendar quarters, the first quarter to commence on April 1 of each year. Each application filed hereunder for registration during the first quarter of the registration year shall be accompanied by the full amount of the annual fee; each application so filed during the second quarter, the third quarter, or the fourth quarter shall be accompanied by three-fourths, one-half, or one-quarter, respectively, of the annual fee; and each application for reregistration filed subsequent to June 30 shall be accompanied by an affidavit that such vehicle has not been previously operated upon the highways or streets of this state during any quarter of the current registration year; provided however, that the fees for all other classes of vehicles shall be prorated on a monthly basis, such fees being reduced one-

twelfth the annual fee for each month of the registration year that has expired.

(b) Notwithstanding the provisions of Subsection (a) of this section or any other section of this Act, the registration or license of any vehicle shall not be issued for or reduced to a fee less than \$5.00, regardless of the quarter or month of the registration year in which application is filed.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 4; Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 2; Acts 1967, 60th Leg., p. 700, ch. 289, § 1, eff. Aug. 28, 1967.]

**Art. 6675a-5. Fees: Motorcycles, Passenger Cars, Buses**

(a) The annual license fee for registration of a motorcycle is Five Dollars.

(b) The annual license fee for registration of a passenger car and a street or suburban bus shall be based upon the weight of a vehicle as follows:

Weight in Pounds	Fee
1-3,500	\$12.00
3,501-4,500	22.00
4,501-6,000	30.00
6,001 and over	55¢ cwt.

The weight of any passenger car or of any street or suburban bus, for purpose of registration, shall be the weight generally accepted as its correct shipping weight plus one hundred (100) pounds.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 5; Acts 1947, 50th Leg., p. 1007, ch. 425, § 2; Acts 1951, 52nd Leg., p. 303, ch. 180, § 1; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(a); Acts 1967, 60th Leg., p. 700, ch. 289, § 1, eff. Aug. 28, 1967.]

**Art. 6675a-5a. Registration of Antique Passenger Cars and Trucks; License Plates; Fees; Renewal; Penalty**

Passenger cars and trucks that were manufactured in 1925 or before, or which become thirty-five (35) or more years old, shall be exempted from the annual license fee for registration otherwise provided by law upon written, sworn application by the owner thereof on a form furnished by the Department. Such application shall show the make, body style, motor number, age of such passenger car or truck, and any other information required by the Department, and shall also state that the passenger car or truck is a collector's item and will be used solely for exhibitions, club activities, parades, and other functions of public interest, and in no case for regular transportation, and will carry no advertising. Provided that this Act shall become effective April 1, 1958, and the Department shall issue license plates which shall contain the words "Antique Auto" or "Antique Truck" and which are to be renewed every five (5) years thereafter. The registration fee for the five (5) year period for passenger cars and trucks qualifying under this Act which were manufactured in 1921 and subsequent years shall be Twenty-five Dollars (\$25.00) and shall be reduced Five Dollars

(\$5.00) for each year of the period that has fully expired at the time of the application, and the fee for the registration of cars and trucks manufactured in 1920 and prior years shall be Fifteen Dollars (\$15.00) for the five year period and shall be reduced Three Dollars (\$3.00) for each year of the five year period that has fully expired at the time of the application. Provided further, that upon such application and upon payment of the proper fee to the County Tax Assessor-Collector of the county in which the owner resides, the Department shall furnish such license plates and receipts which shall be issued to the owner and such plates shall be valid without renewal until the expiration date shown upon the plates, provided such vehicle continues to be owned by the same owner. It is further provided that in the event the vehicle is transferred to another owner, or is junked, destroyed, or otherwise ceases to exist, the registration receipt and plates shall become null and void and shall be sent immediately to the Department. It is further provided that the Tax Assessor-Collector shall not renew the registration of any such vehicle until the registered owner surrenders to him the license plates and receipt that were issued for such vehicle for the previous period. In the event the license plates become lost, stolen, or mutilated, the owner may secure replacement plates by executing an affidavit and application on a form furnished by the Department and by the payment of the fee prescribed in this section. Any owner of a passenger car or truck registered under the provisions of this section who violates any of the provisions herein shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Five Dollars (\$5.00) and not more than Two Hundred Dollars (\$200.00).

[Acts 1957, 55th Leg., p. 702, ch. 297, § 1; Acts 1971, 62nd Leg., p. 2356, ch. 720, § 1, eff. June 8, 1971.]

Section 2 of the Act of 1957 repealed all conflicting laws and parts of laws to the extent of such conflict.

**Art. 6675a-5b. Fees; Vehicles of Nonprofit Service Organizations Designed for Parade Purposes**

Sec. 1. The annual license fee for the registration of any motor vehicle owned and operated by a nonprofit service organization and designed, constructed and used primarily for parade purposes shall be Ten (\$10.00) Dollars.

Sec. 2. The provisions of this Act shall not apply to any motor vehicle on which an annual license fee for registration has been paid pursuant to other laws of this state.

[Acts 1959, 56th Leg., p. 645, ch. 298.]

**Art. 6675a-5c. Special Personalized Prestige License Plates**

The State Highway Department shall establish and issue special personalized prestige license plates. For a fee of Ten Dollars (\$10.00), which fee shall be in addition to the regular motor vehicle registration fee, any owner may apply for issuance of said personalized li-

cense plates. The Department shall establish and promulgate procedures for application for and issuance of such special personalized prestige license plates and provide a deadline each year for the applications. No two owners will be issued identical lettered and/or numbered plates. An owner must make a new application and pay a new fee each year he desires to obtain special personalized prestige license plates. However, once an owner obtains personalized plates, he will have first priority on those plates for each of the following years that he makes timely and appropriate application. Ninety-five per cent (95%) of each Ten Dollar fee collected by the Department under this Section shall be deposited in the State Treasury to the credit of the General Revenue Fund and the remaining five per cent (5%) shall be deposited in the State Treasury to the credit of the State Highway Fund to defray the costs of administration of this Section.

[Acts 1965, 59th Leg., p. 302, ch. 135, § 1.]

**Art. 6675a-5d. Credit for License Fees Paid on Motor Vehicles Subsequently Destroyed**

If the owner of any motor vehicle which is destroyed to such an extent that it cannot thereafter be operated upon the highways of this state transmits the license fee receipt and the license plates for the vehicle to the State Highway Department, he is entitled to a license fee credit if the prorated portion of the license fee for the remainder of the year is over \$15.00. The State Highway Department, upon satisfactory proof of the destruction of the vehicle, shall issue a license fee credit slip to the owner in an amount equal to the prorated portion of the license fee for the remainder of the year if it is over \$15.00. The owner of the vehicle at the time of destruction may during the same or the following registration year use the license fee credit slip as payment or part payment for the registration of additional vehicles to the extent of the license fee credit slip. The State Highway Department shall promulgate regulations necessary for the administration of this Act.

Any owner of a motor vehicle applying for a license fee credit under this Section shall execute a sworn statement upon a form provided by the State Highway Department showing that the license plates have been surrendered to the State Highway Department. This statement shall be delivered to the purchaser of the destroyed vehicle who may surrender this statement to the State Highway Department in lieu of the vehicle license plates.

[Acts 1965, 59th Leg., p. 740, ch. 346, § 1.]

**Art. 6675a-5e. Disabled Veterans and Their Transporters; Special License Plates; Fee Exemptions; Regulations**

(a) A veteran of the armed forces of the United States who, as a result of military service, has suffered at least a 70% service-connected disability, and who receives compensation from the federal government because of

such disability, is entitled to register, for his own personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of the prescribed annual registration fee.

(b) An organization which owns a motor vehicle used exclusively for the transportation of disabled veterans without charge to them may register the vehicle without the payment of the prescribed annual registration fee. "Disabled veteran," as used in this subsection, means a veteran of the armed forces of the United States who, as a result of military service, has suffered a service-connected disability. A statement by the Veterans County Service Officer of the county in which the vehicle is registered or by the Veterans Administration that the vehicle is exclusively used for the transportation of disabled veterans without charge to them is satisfactory evidence that the organization is qualified under this subsection.

(c) The Highway Department shall provide for the issuance of specially designed license plates for persons and organizations who are qualified under this Act. The letters "DV" shall appear as either a prefix or a suffix to the numerals on the plates, and the words "DISABLED VET" shall also appear on the plates.

(d) Application for the specially designed license plates provided for in this Section shall be made on forms prescribed and furnished by the Department and must be submitted to the Department by October 1st preceding the Registration Year for which requested. Each application shall be accompanied by a fee of One Dollar (\$1.00) and such evidence as the Department may require as proof of the applicant's eligibility to receive the registration fee exemption.

(e) A vehicle on which these specially designed plates are displayed is exempt from the payment of parking fees, including those collected through parking meters, charged by any governmental authority other than a branch of the federal government.

(f) If during the registration year the owner disposes of the vehicle upon which the license plates issued under this Act are affixed, or if an organization ceases to use the vehicle on which the special license plates are affixed exclusively to transport disabled veterans, such plates are automatically cancelled and it shall be the responsibility of such owner to remove the license plates and return them to the Texas Highway Department for cancellation. Thereafter, the owner may qualify for another set of license plates as provided for in this Section.

(g) If the special license plates provided herein become lost, stolen, or mutilated, the owner of the vehicle may secure a set of replacement license plates from the Department for a fee of One Dollar (\$1.00).

(h) The fees provided for in this Section shall be deposited in the State Treasury to the credit of the State Highway Fund.

(i) The Department may promulgate such reasonable rules and regulations as it may deem necessary for the orderly administration of this Act.

[Acts 1971, 62nd Leg., p. 1183, ch. 283, § 1, eff. May 19, 1973; Acts 1973, 63rd Leg., p. 278, ch. 129, § 1, eff. Aug. 27, 1973.]

**Art. 6675a-6. Fees; Commercial Motor Vehicles or Truck-Tractors**

The annual license fee for the registration of a commercial motor vehicle or truck tractor shall be based upon the gross weight and tire equipment of the vehicle as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof	
	Equipped with Pneumatic Tires	Equipped with Solid Tires
1- 6,000	\$ .44	\$ .55
6,001- 8,000	.495	.66
8,001-10,000	.605	.77
10,001-17,000	.715	.88
17,001-24,000	.77	.99
24,001-31,000	.88	1.10
31,001-and up	.99	1.32

The term "gross weight" as used in this Section shall mean the actual weight of the vehicle full equipped with body, and other equipment, as certified by any official Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" of any vehicle except a bus, as used in this Section, shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity. The "net carrying capacity" of a bus as defined in this Act shall be computed by multiplying its seating capacity by one hundred and fifty (150) pounds. The seating capacity of any such vehicle shall be the manufacturer's rated seating capacity exclusive of the driver's or operator's seat. The seating capacity of any such vehicle not rated by the manufacturer shall be determined by allowing one (1) passenger for each sixteen (16) inches that such vehicle will seat, exclusive of the driver's or operator's seat.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 6; Acts 1941, 47th Leg., p. 144, ch. 110, § 5; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(b).]

**Art. 6675a-6½. Registration and Fees; Combination of Truck Tractors or Commercial Motor Vehicles with Semitrailers**

(a) Notwithstanding the provisions of Sections 6 and 8 of this Act, as amended (Articles 6675a-6 and 6675a-8, Vernon's Texas Civil Statutes), the annual license fee for the registration of a truck tractor or commercial motor vehicle with a manufacturer's rated carrying capacity in excess of one (1) ton used or to be used in combination with a semitrailer having a gross weight in excess of six thousand (6,000) pounds shall be based on the combined gross

weight of all such vehicles used in the combination as follows:

Combined Gross Weight	Fee Per 100 lbs. or Fraction Thereof
*18,000-36,000	\$ .60
36,001-42,000	.75
42,001-62,000	.90
62,001-and up	1.00

\*(No such combination of vehicles may be registered for a combined gross weight of less than 18,000 pounds.)

In addition, semitrailers having gross weights in excess of six thousand (6,000) pounds used or to be used in combination with truck tractors or commercial motor vehicles with manufacturers' rated carrying capacities in excess of one (1) ton shall be registered for a "token" fee of Fifteen Dollars (\$15.00) for the Motor Vehicle Registration Year, regardless of the date such semitrailers are registered within said Registration Year, and the Fifteen Dollar (\$15.00) distinguishing license plates issued for such semitrailers shall be valid only when said vehicles are operated in combination with truck tractors or commercial motor vehicles that have been properly registered for their combined gross weight; provided, however, that the "token" fee for semitrailers shall not exempt such vehicles from the provisions of the Certificate of Title Act.

(b) For registration purposes, semitrailers which are converted to trailers by means of auxiliary axle assemblies shall retain their status as semitrailers.

(c) Truck tractors or commercial motor vehicles with manufacturers' rated carrying capacities in excess of one (1) ton used exclusively in combination with semitrailer-type vehicles displaying Five Dollar (\$5.00) distinguishing license plates for which such semitrailer-type vehicles are eligible under the provisions of this Act shall not be required to register in combination; provided, however, that such truck tractors or commercial motor vehicles continue to be registered as provided in Section 6 of this Act; and provided further, that the provisions of this section shall not apply to:

(1) vehicles registered or to be registered with United States Government license plates or exempt license plates issued by the State of Texas;

(2) truck tractors or commercial motor vehicles registered or to be registered with Five Dollar (\$5.00) distinguishing license plates for which such vehicles are eligible under the applicable registration statutes of this State;

(3) truck tractors or commercial motor vehicles used exclusively in combination with semitrailers of the housetrailer type; provided, however, that such truck tractors or commercial motor vehicles shall continue to be registered as provided in Section 6 of this Act; and, provided further that

semitrailers of the housetrailer type shall continue to be registered as provided in Section 8 of this Act;

(4) vehicles registered or to be registered with temporary registration permits for which such vehicles are eligible under the applicable registration statutes of this State;

(5) truck tractors or commercial motor vehicles registered or to be registered with Farm Truck or Farm Truck Tractor License Plates; provided, however, that such farm trucks or farm truck tractors shall continue to be registered as provided in Section 6a of this Act;<sup>1</sup> or

(6) truck tractors or commercial motor vehicles and semitrailers registered or to be registered with Soil Conservation License Plates; provided, however, that such truck tractors or commercial motor vehicles and semitrailers shall continue to be registered as provided in Subsection (h)(1), Section 2 of this Act,<sup>2</sup> based on the registration fees for truck tractors or commercial motor vehicles as prescribed in Section 6 of this Act, and the registration fees for trailers or semitrailers as prescribed in Section 8 of this Act.

(d)(1) The term "combined gross weight" as used in this section means the empty weight of the truck tractor or commercial motor vehicle combined with the empty weight of the heaviest semitrailer(s) used or to be used in combination therewith plus the heaviest net load to be carried on such combination during the Motor Vehicle Registration Year, provided that in no case may the combined gross weight be less than eighteen thousand (18,000) pounds.

(2) The term "empty weight" as used in this section means the actual unladen weight of the truck tractor or commercial motor vehicle and semitrailer(s) combination fully equipped, as officially certified by any public weigher or license and weight patrolman of the Texas Department of Public Safety.

[Acts 1971, 62nd Leg., p. 22, ch. 9, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Article 6675a-6a.

<sup>2</sup> Article 6675a-2(h)(1).

#### Art. 6675a-6a. Registration Fee; Commercial Motor Vehicles Used Principally for Farm Purposes

When a commercial motor vehicle is to be used for commercial purposes by the owner thereof only in the transportation of his own poultry, dairy, livestock, livestock products, timber in its natural state, and farm products to market, or to other points for sale or processing, or the transportation by the owner thereof of laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to his own farm or ranch exclusively for his own use, or use on such farm or ranch, the registration license fee shall be fifty per cent (50%) of the registration fee

prescribed for weight classifications in Section 6 of this Act;<sup>1</sup> provided, however, that the additional use of the vehicle as a means of passenger transportation, without charge, of members of the family to attend church or school, to visit doctors for medical treatment or supplies, and for other necessities of the home or family shall not prevent its registration as a farm vehicle. Nothing in the foregoing shall be interpreted as permitting the use of a farm licensed vehicle in connection with other gainful employment. It shall be the duty of the Highway Commission to provide license plates for vehicles registered under this Section distinguishable from license plates used for other commercial vehicles using the highways. If the owner of any commercial motor vehicle registered under this Section shall use or permit to be used any such vehicle for any other purpose than those provided for in this Section, he shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and each use of such vehicle and each permission for such use of such vehicle shall constitute a separate offense. All commercial motor vehicles, truck tractors, road tractors, trailers and semi-trailers as defined in Section 1 of Chapter 23 of the General Laws of the Fifth Called Session of the Forty-first Legislature,<sup>2</sup> not coming within the provisions of this Section, shall be required to pay all registration and license fees prescribed by other provisions of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 82, ch. 27, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 75, ch. 36, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, § 4; Acts 1957, 55th Leg., p. 216, ch. 102, § 1.]

<sup>1</sup> Article 6675a-6.

<sup>2</sup> Article 6675a-1.

Section 2 of the amendatory Act of 1957 repealed or modified all conflicting laws and parts of laws to extent of such conflict only.

#### Art. 6675a-6b. Short Term Commercial Motor Vehicle Permit to Haul Loads of Larger Tonnage

Sec. 1. When a commercial motor vehicle, truck tractor, trailer or semitrailer which has been registered by the owner, is used for the transportation of his own seasonal agricultural products to market, or to other points for sale or processing, or the transportation of seasonal laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch, the owner may, by paying an additional fee, receive a short-term permit allowing him to haul loads of larger tonnage for a limited period of less than one (1) year. No such permit shall be issued for less than one (1) month, and no such permit shall extend beyond the expiration of the regular license. The fee shall be a percentage of the difference between the owner's regular annual registration fee and the annual fee for the desired ton-

nage, and shall be computed according to the following table:

1-month (or 30 consecutive days) ---	10%
1-quarter (3 consecutive months) ---	30%
2-quarters (6 consecutive months) ---	60%
3-quarters (9 consecutive months) ---	90%

Sec. 2. No such permit shall be issued unless such registration fee has been paid for hauling of such larger tonnage prior to the actual hauling thereof. The quarters for which such additional permits are to be issued shall be calendar quarters, the first such quarter to commence on April 1st of each year.

Sec. 3. The State Highway Department shall design, prescribe and furnish for each vehicle so registered, the necessary sticker, plate or other means of indicating the additional weight and period of time for which such additional registration is made.

[Acts 1959, 56th Leg., p. 981, ch. 456; Acts 1971, 62nd Leg., p. 1225, ch. 301, § 1, eff. May 24, 1971.]

#### Art. 6675a-6c. Temporary Registration Permits for Foreign Commercial Vehicles

##### Authority to Issue Permits; Exceptions

Sec. 1. To provide for the movement of commercial motor vehicles, trailers, and semi-trailers subject to registration by the State of Texas, which are not authorized to travel on the public roads of the State for lack of registration or for lack of reciprocity with the State or Country in which such vehicles are registered, the Texas Highway Department is authorized to issue temporary permits which shall be recognized as legal registration. However, such temporary permits shall not be issued for the importation of citrus fruit into Texas from a foreign country under the provisions of this Section except for foreign export or processing for foreign export.

##### Fees; Conditions

Sec. 2. A temporary permit valid for twenty-four (24) hours shall be issued for the fee of Five Dollars (\$5).

The twenty-four hour permit shall be valid for any period of time not to exceed twenty-four (24) hours from the effective date and time as shown on the receipt issued as evidence of such registration, and such permit shall provide only for the movement of each vehicle transporting property between Mexico and counties of this State which have a boundary contiguous with Mexico; provided that each such twenty-four hour permit shall be valid only within the county of entry and within one other county adjoining said county of entry as specified on said permit; providing, however, that each county involved must be contiguous to Mexico. Such temporary permits shall not be issued for the importation of citrus fruit into Texas from a foreign country under the provisions of this Section except for foreign export or processing for foreign export.

##### Rules and Regulations

Sec. 3. The Texas Highway Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and may prescribe an application for such permits and other forms as it may deem proper.

##### Method of Issuance; Deposit of Fees

Sec. 4. Such temporary registration permits shall be issued by the County Tax Assessors-Collectors or by the Texas Highway Department upon receipt of proper application accompanied by the statutory fees, as prescribed by Section 2 above, in cash, postal money order, or certified check for each such vehicle to be operated or moved upon the public highways. All registration permit fees collected by the Texas Highway Department shall be deposited in the State Treasury to the credit of the State Highway Fund, and such fees collected by the County Tax Assessors-Collectors shall be reported and deposited the same as all other registration fees as provided by Section 10, Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Section 2, Chapter 301, Acts of the Fifty-fifth Legislature, Regular Session, 1957 (codified in Vernon's Texas Civil Statutes as Article 6675a-10).

##### Liability Insurance

Sec. 5. Before the issuance of such temporary registration permits, the operator of any vehicle entering this State from another Country shall present to the County Tax Assessor-Collector or the Highway Department such evidence as shall indicate that such motor vehicle is protected by such insurance and in such amounts as may be prescribed in Section 5 of the Texas Motor Vehicle Safety Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended, and such policies must be issued by an insurance company or surety company authorized to write Motor Vehicle Liability Insurance in this State.

##### Violations; Penalties

Sec. 6. Any person violating any provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding Two Hundred Dollars (\$200); provided, however, nothing in this Act shall exempt the operator of a motor vehicle from complying with all other laws regulating the operation of motor vehicles in this State.

[Acts 1963, 58th Leg., p. 1361, ch. 517, eff. Aug. 23, 1963; Acts 1973, 63rd Leg., p. 1230, ch. 443, § 1, eff. June 14, 1973.]

Section 2 of the 1973 amendatory act provided: "If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any persons or circumstances shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision."

**Art. 6675a-6d. Temporary Permits for Commercial Motor Vehicles**

Purpose; Authority to Issue Temporary Permits in Lieu of Registration

Sec. 1. To provide for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, or Canada, which are subject to registration by the State of Texas and which are not authorized to travel on the public roads of the State for lack of registration or for lack of reciprocity with the State of the United States or Canadian Province in which such vehicles are registered, the Texas Highway Department is authorized to issue temporary permits which will be recognized in lieu of registration.

Fee; Duration of Permit; Inspection of Vehicles

Sec. 2. A temporary permit valid for seventy-two (72) hours shall be issued to each such vehicle for the fee of Ten Dollars (\$10), and such temporary permit shall be valid for any period of time not to exceed seventy-two (72) hours from the effective day and time as shown on the receipt issued as evidence of such registration. Such vehicles shall be exempt from the inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.

Rules and Regulations

Sec. 3. The Texas Highway Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and may prescribe an application for such permits and other forms as it may deem proper.

Violations of Registration Laws

Sec. 4. A permit under this Act shall not be issued to commercial motor vehicles, trailers, semitrailers, or motor buses apprehended for violating the registration laws of this State; and, furthermore, such apprehended vehicles shall be immediately subject to Texas registration as prescribed by law.

Applications for Permits; Deposit of Fees

Sec. 5. Such temporary registration permits shall be issued by the County Tax Assessor-Collectors or by the Texas Highway Department upon receipt of proper application accompanied by the statutory fees, as prescribed by Section 2 above, in cash, postal money order, or certified check for each such vehicle to be operated or moved upon the public highways. All temporary permit fees collected by the Texas Highway Department shall be deposited in the State Treasury to the credit of the State Highway Fund, and such fees collected by the County Tax Assessor-Collectors shall be reported and deposited the same as all registration fees as provided by Section 10, Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Section 2, Chapter 301, Acts of the Fifty-fifth Legislature, Regular Session, 1957 (codified in Ver-

non's Texas Civil Statutes as Article 6675a-10).

Operating With Expired Permits

Sec. 6. Any person operating a commercial motor vehicle, trailer, or semitrailer with an expired permit issued under this Act shall be deemed to be operating an unregistered vehicle subject to the penalties as prescribed by law. [Acts 1965, 59th Leg., p. 1643, ch. 707, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1059, ch. 218, § 1, eff. May 17, 1971.]

Section 7 of Acts 1965, 59th Leg., p. 1643, ch. 707 repealed all conflicting laws and parts of laws to the extent of such conflict.

**Art. 6675a-6e. Temporary Registration for Nonresidents**

Definitions

Sec. 1. The following words and phrases when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this Section as follows:

"Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

"Motor Vehicle" means every vehicle as herein defined which is self-propelled.

"Passenger Car" means any motor vehicle other than a motorcycle or a bus as defined in this Act designed or used primarily for the transportation of persons.

"Commercial Motor Vehicle" means any motor vehicle other than a motorcycle designed or used for the transportation of property including every vehicle used for delivery purposes.

"Trailer" means every vehicle without motive power designed or used for carrying property or passengers wholly on its own structure and to be drawn by a motor vehicle.

"Semitrailer" means every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by a motor vehicle.

"Owner" means any person who holds a legal title to a vehicle or who has the legal right of possession thereof or the legal right of control of said vehicle.

"Occasional trip" means not to exceed five (5) trips into this State during any calendar month nor to exceed five (5) days on any one (1) trip.

"Nonresident" means every resident of a State or Country other than the State of Texas whose sojourn in this State is as a visitor and does not engage in gainful employment or enter into business or an occupation, except as may be otherwise provided in any reciprocal agreement with any other State or Country.

"Department" means the State Highway Department of this State, acting directly or through its duly authorized officers and agents.

**Nonresidents; Operation of Motor Vehicle Without Registration**

Sec. 2. A nonresident owner of a motor vehicle, trailer, or semitrailer which has been duly registered for the current year in the State or Country of which the owner is a resident and in accordance with the laws thereof, may be allowed to operate said vehicles for the transportation of persons or property for compensation or hire without being registered in this State, provided the owner thereof does not exceed two (2) trips during any calendar month and remains on each of said trips within the State not to exceed four (4) days. Provided, that nothing in this Act shall prevent a nonresident owner of a motor vehicle from operating at will such vehicle in this State for the sole purpose of marketing farm products raised exclusively by him, nor a resident of an adjoining State or Country from operating at will a privately owned and duly registered vehicle not operated for hire in this State for the purpose of going to and from his place of regular employment and the making of trips for the purpose of purchasing goods, wares, and merchandise. And provided, further, that any nonresident owner of a privately owned vehicle may be permitted to make an occasional trip into this State with such vehicle under this Act without being registered in this State. It is also provided that a nonresident owner of a privately owned passenger car not operated for compensation or hire may be allowed to operate said passenger car if duly registered in his resident State or Country for the length of time the license plates are valid, provided the owner is a visitor in this State and does not engage in gainful employment or enter into any kind of business or occupation. It is expressly provided, that the foregoing privileges may only be allowed in the event that under the laws of such other State or Country like exceptions are granted to vehicles registered under the laws of and owned by residents of this State. Provided further, that nothing in this Act shall affect the rights or status of any vehicle owner under any Reciprocal Agreement between this State and any other State or Foreign Country.

**Trucks, Trailers, Etc., Used in Movement of Farm Products; Temporary Registration Permit to Nonresident Owners**

Sec. 2A. To expedite and facilitate, during the harvesting season, the harvesting and marketing of farm products produced in this State, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck-tractor, trailer or semitrailer to be used in the movement of such farm commodities from the place of production to market, storage or railhead, not more than seventy-five (75) miles distant from such place

of production, or to be used in the movement of machinery used to harvest any of the commodities named in this section.

To expedite and facilitate, during the harvesting season, the harvesting and movement of farm products produced outside of Texas but marketed or processed in Texas or moved to points in Texas for shipment, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck tractor, trailer or semitrailer to be used in the movement of such farm commodities from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than eighty (80) miles distant from such point of entry into Texas. All mileages and distances referred to herein are State Highway mileages. Before such temporary registration provided for in this paragraph may be issued, the applicant must present satisfactory evidence that such motor vehicle is protected by such insurance and in such amounts as may be described in Section 5 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended, and such policies must be issued by an insurance company or surety company authorized to write Motor Vehicle Liability Insurance in this State; and that such vehicle has been inspected as required under the Uniform Act Regulating Traffic on Highways in Texas (Article XV of Article 6701d, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended.

The Department is authorized to prescribe the form of the application and the information to be furnished therein for such temporary registration permits. If the application is granted, the Department shall issue a special distinguishing insignia which must be attached to such vehicle in lieu of the regular Texas Highway registration plates. Such special insignia shall show its expiration date. The temporary registration permit fee shall be one-twelfth ( $\frac{1}{12}$ ) of the annual Texas registration fee for the vehicle for which the special permit is secured.

The temporary permits herein authorized shall be issued only when the vehicle for which said permit is issued is legally registered in the nonresident owner's home state or country for the current registration year; and said permit will remain valid only so long as the home state or country registration is valid; but in any event the Texas temporary registration permit will expire 30 days from the date of issuance. Not more than three (3) such temporary registration permits may be issued to a nonresident owner during any one (1) vehicle registration year in the State of Texas. A vehicle registered under the terms of this Act may not be operated in Texas after the expiration of the temporary permit unless the nonresident owner secures a second temporary permit as provided above, or unless the nonresident owner registers the vehicle under the ap-

propriate Texas vehicular registration statutes, applicable to residents, for the remainder of the registration year. No such vehicle may be registered with a Texas farm truck license.

Any person who shall transport any of the commodities described in this Act, under a temporary permit provided for herein, to a market, place of storage, processing plant, railroad or seaport, which is a greater distance from the place of production of such commodity in this State, or the point of entry into the State of Texas than is provided for in said temporary permit, or shall follow a route other than that prescribed by the Highway Commission, shall be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200).

Nothing in this Act shall be construed to authorize such nonresident owner or operator to operate or cause to be operated any of such vehicles in this State in violation of Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes) or any of the other laws of this State.

**Motor Vehicles Unauthorized to Travel on Roads for Lack of Registration; Temporary Registration for Transit Only**

Sec. 3. To provide for the movement of any vehicle subject to license by the State of Texas which is not authorized to travel on the public roads of the State for lack of registration or for lack of reciprocity with the state or country in which it is registered, the Department is authorized to temporarily register such vehicle upon application of the owner thereof. Such registration shall be for one (1) trip only between the points of origin and destination and such intermediate points as may be set forth in the application and registration receipt; and, except where the vehicle is a bus operating under charter which is not covered by a reciprocity agreement with the state or country in which it is registered, such registration shall be for the transit of the vehicle only, and the vehicle shall not at the time of the transit be used for the transportation of any passenger or property whatsoever, for compensation or otherwise. In no case shall such temporary registration be valid for a period longer than fifteen (15) days from the effective date of the registration.

Such registration may be obtained by submitting application therefor on a form prescribed and furnished by the Department, to the County Tax Collector of the county in which the vehicle is first to be operated on the public roads of this State, or to the Department in Austin, and by accompanying such application with a fee of Five Dollars (\$5) in cash, post office money order or certified check. A registration receipt shall be issued on a form prescribed and furnished by the Department, which shall be recognized as legal registration and which shall contain all pertinent information required by this law. Said registration receipt shall be carried in the ve-

hicle at all times during its transit within the State.

The Department may refuse, and notify the County Tax Collectors to refuse, to issue temporary registration for any vehicle, when, in its opinion, the vehicle or the owner thereof has been involved in operations which constitute an abuse of the privilege herein granted. Any registration issued after such notice to the County Tax Collectors shall be void.

Any person who shall operate or move any vehicle under registration provided for herein, outside the routes provided for therein, shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

This Act applies to registration of vehicles only, and nothing herein shall be construed to authorize the operation or movement of any vehicle in this State in violation of any other laws of this State.

[Acts 1930, 41st Leg., 5th C.S., p. 141, ch. 18; Acts 1931, 42nd Leg., p. 34, ch. 27; Acts 1933, 43rd Leg., 1st C.S., p. 158, ch. 56, § 1; Acts 1935, 44th Leg., p. 800, ch. 342, § 1; Acts 1947, 50th Leg., p. 749, ch. 370, § 1; Acts 1949, 51st Leg., p. 117, ch. 70, § 1; Acts 1953, 53rd Leg., p. 397, ch. 111, § 1; Acts 1957, 55th Leg., p. 1305, ch. 438, § 1; Acts 1957, 55th Leg., p. 1308, ch. 439, § 1; Acts 1965, 59th Leg., p. 479, ch. 243, § 1, eff. May 21, 1965; Acts 1971, 62nd Leg., p. 996, ch. 184, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1389, ch. 374, § 1, eff. Aug. 30, 1971.]

Sections 2 to 4 of the amendatory act of 1969 provided:

"Sec. 2. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 4. The fact that the number of motor vehicle registrations made by the county tax assessors-collectors has steadily increased, and the fact that labor and material costs and other administrative expenses which are necessary in the issuance of such registrations have materially increased, and the fact that there has been no increase in the fees allowed tax assessors-collectors for performing this service, create an emergency and an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each house be and the same is hereby suspended, and that this Act shall take effect and be in force at the beginning of the 1970 registration year, and it is so enacted."

**Art. 6675a-7. Fees; Road Tractors**

The annual license fee for the registration of a road tractor shall be based upon the weight of the tractors, as certified by any Official Public Weigher or any License and Weight Inspector of the State Highway Department, as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof
1-4,000	\$ .275
4,001-6,000	.55
6,001-8,000	.66
8,001-10,000	.825
10,001-and up	1.10

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 7; Acts 1941, 47th Leg., p. 144, ch. 110, § 6; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(c).]

**Art. 6675a-8. Fees; Trailers or Semi-Trailers**

The annual license fee for the registration of trailer or semi-trailer shall be based upon the gross weight and tire equipage of the trailer or semi-trailer as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof	
	Equipped With Pneumatic Tires	Equipped with Solid Tires
1- 6,000	\$ .33	\$ .44
6,001- 8,000	.44	.55
8,001-10,000	.55	.66
10,001-17,000	.66	.88
17,001-and up	.715	.99

The term "gross weight" as used in this Section means the actual weight of the trailer or semi-trailer, as officially certified by any Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" as used in this Section shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8; Acts 1941, 47th Leg., p. 144, ch. 110, § 7; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(d).]

**Art. 6675a-8a. Fees; Motor Buses**

Annual license fees for the registration of motor buses shall be based upon the "gross weight" of the vehicle as follows:

Gross Weight in Pounds	Fee Per 100 lbs. or Fraction thereof
1-6,000	\$0.44
6,001-8,000	0.495
8,001-10,000	0.605
10,001-17,000	0.715
17,001-24,000	0.77
24,001-31,000	0.88
31,001-and up	0.99

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8a; Acts 1941, 47th Leg., p. 144, ch. 110, § 8; Acts 1955, 54th Leg., p. 381, ch. 102, § 1; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(e); Acts 1959, 56th Leg., p. 170, ch. 96, § 1.]

**Art. 6675a-8b. Repealed by Acts 1955, 54th Leg., p. 522, ch. 158, § 2**

**Art. 6675a-8c. Diesel Motors, Vehicles Propelled by; Fee; License Receipts to Show Type of Motor**

It is expressly provided that the license fees for all motor vehicles using or being propelled by diesel motors or engines shall be the fees provided in other sections of this Act, plus an additional eleven percent (11%); provided, however, that such additional percentage shall not apply to the fee for the combined gross weight of vehicles registered in combination. When motor vehicles are propelled by diesel fuel, such fact shall be indicated on the license

receipts issued for such vehicles by the county tax collectors.

[Acts 1941, 47th Leg., p. 144, ch. 110, § 6; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(f); Acts 1971, 62nd Leg., p. 23, ch. 9, § 2, eff. Aug. 30, 1971.]

**Art. 6675a-9. Schedule of Fees Furnished Tax Collectors**

The Department shall compile and furnish to the County Tax Collectors a complete and detailed schedule of license fees to be collected on the various makes, models and types of vehicles required to be registered hereunder; and the weight, net weight, or gross weight of any vehicle required to be registered, as determined by the Department, shall be accepted as correct for registration purposes to the exclusion of any and all other purported weights of said vehicle.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 9.]

**Art. 6675a-10. Apportionment of Funds**

On Monday of each week each County Tax Collector shall deposit in the County Depository of his County to the credit of the County Road and Bridge Fund an amount equal to one hundred per cent (100%) of net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Fifty Thousand Dollars (\$50,000).

Thereafter, and until the amount so deposited for the year shall have reached a total of One Hundred and Seventy-five Thousand Dollars (\$175,000) he shall deposit to the credit of said Fund on Monday of each week an amount equal to fifty per cent (50%) of collections made hereunder during the preceding week.

Thereafter he shall make no further deposits to the credit of said Fund during that calendar year. All collections made during any week under the provisions of this Act in excess of the amounts required to be deposited to the credit of the Road and Bridge Fund of his County shall be remitted by each County Tax Collector on each Monday of the succeeding week to the State Highway Department together with carbon copies of each license receipt issued hereunder during the preceding week. He shall also on Monday of each week remit to the Department, as now provided by law, all transfer fees and chauffeurs' license fees collected by him during the preceding week, together with carbon copies of all receipts issued for said fees during the week.

He shall also accompany all remittances to the Highway Department with a complete report of such collections made and disposition made thereof, the form and contents of said report to be prescribed by the State Highway Department. None of the moneys so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said moneys shall be used for the construction and maintenance of lateral roads in such county under the supervision of

the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners Court shall have authority to command the services of the District Engineer or Resident Engineer of the State Highway Department for the purposes of supervising the construction and surveying of lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act may be used by the counties in the payment of obligations, if any, issued and incurred in the construction or the improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the county road system; or for the purpose of constructing new roads, or in aid thereof.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(g).]

#### Art. 6675a-10a. Remittance of Funds, Interest

All funds required by this Act to be remitted to the State Highway Department, which are not so remitted within sixty days after being collected, shall thereafter bear interest for the benefit of the State Highway Fund at the rate of ten (10%) per cent per annum, which interest shall be charged to each County Tax Collector failing or refusing to remit said funds within said period of sixty days. The exact amount of said interest charge shall be determined by the State Highway Department by a careful audit of the license fees received and disbursed by said Tax Collector pursuant to the laws relating to the registration and transfer of vehicles; and the State of Texas shall have a valid claim against the County Tax Collector and his official bondsmen<sup>1</sup> for the amount of such interest as determined by said audit, provided, however, that no person shall be authorized or permitted to collect any license fees under the provisions of this Act except the Tax Collector or a duly authorized and appointed deputy.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10a; Acts 1930, 41st Leg., 5th C.S., p. 167, ch. 33, § 1.]

<sup>1</sup> So in enrolled bill. Session Laws read "bondmen".

#### Art. 6675a-11. Fees and Expenses of Tax Collector; Mailing Procedures

As compensation for his services under the provisions of this and other laws relating to the registration of vehicles, each County Tax Assessor-Collector shall receive a uniform fee of Sixty-five Cents (65¢) for each of the first five thousand (5,000) receipts issued by him each year pursuant to said laws; he shall receive a uniform fee of Fifty-five Cents (55¢) for each of the next ten thousand (10,000) receipts so issued, and a uniform fee of Fifty Cents (50¢) for each of the balance of said receipts so issued during the year. Said compensation shall be deducted weekly by each County Tax Assessor-Collector from the gross collection made pursuant to this Act and other laws relating to registration of vehicles. Out of the compensation so allowed the County Tax Assessors-Collectors, it is hereby expressly provided

and required that they shall pay the entire expense of issuing all license receipts and license plates issued pursuant hereto. It is further provided that the County Tax Assessors-Collectors may collect an additional service charge of One Dollar (\$1.00) from each applicant desiring to register or reregister by mail. This service charge shall be used to cover the cost of handling and postage to mail the registration receipt and insignia to the applicant. The Highway Department may issue and promulgate procedures to cover the timely application for and issuance of registration receipts and insignia by mail.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 11; Acts 1951, 52nd Leg., p. 278, ch. 161, § 1; Acts 1969, 61st Leg., p. 1657, ch. 522, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 71, ch. 36, § 2, eff. March 22, 1971.]

#### Art. 6675a-12. License Receipt

The Department shall issue, or cause to be issued, to the owner of each vehicle registered under the provisions of this Act a license receipt which shall indicate the date of its issuance, the license number assigned the registered vehicle, the name and address of the owner and such other information or statement of facts as may be determined by the Department.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12.]

#### Art. 6675a-12a. Duplicate License Receipt

The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof from the State Highway Department or the County Collector who issued the original receipt by paying a fee of Twenty-five Cents (25¢) for said duplicate. The fees derived from the issuance of duplicate license receipts are to be retained by the office issuing same as a fee of office.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12a; Acts 1951, 52nd Leg., p. 279, ch. 162, § 1.]

#### Art. 6675a-12b. Rebuilt Vehicles

It shall be the duty of each Tax Collector before registering a rebuilt vehicle to require from the owner or applicant an affidavit stating that such vehicle is rebuilt and giving the names of the persons or firms from whom the parts used in assembling the vehicle were obtained.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12b.]

#### Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles

(a) The Department shall issue to applicants for a motor vehicle registration, on payment of the required fee, a plate or plates, symbols, tabs, or other devices which when attached to a vehicle as prescribed by the Department are the legal registration insignia for the year issued.

(b) The Department shall issue only one license plate or set of license plates for each vehicle during any five-year period, the first

such period to begin April 1, 1975, unless a replacement plate or set of plates is applied for under the provisions of Section 13a of this Act.<sup>1</sup>

(c) Upon the application and payment of the prescribed fee for reregistration of a vehicle for the first, second, third, or fourth registration year following the issuance of a plate or set of plates for the vehicle, the Department shall issue a symbol, new license plates, tab, or other device to be attached by the applicant to the plate or plates as prescribed by the Department.

(d) Replacement plates issued under the provisions of Section 13a of this Act may be used during the registration year of issue and during the succeeding years of the five year period as prescribed in subparagraph (b) above if the proper symbol, tab, or other device is properly attached.

(e) The provisions of Subsections (b), (c), and (d) of this section do not apply to the issuance of special category plates as designated by the Department, including State Official license plates, exempt plates for governmental entities, and temporary registration plates.

(f) The Department shall make and publish rules and regulations for the issuance and use of license plates, symbols, tabs, and other devices issued under the provisions of this Act.

(g) The Department shall provide a separate and distinctive tab to be affixed to the license plates of those automobiles, pickups and recreational vehicles that are offered for rent, as a business, to any part of the general public.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 13; Acts 1933, 43rd Leg., p. 547, ch. 178, § 1; Acts 1943, 48th Leg., p. 56, ch. 51, § 1; Acts 1945, 49th Leg., p. 31, ch. 22, § 1; Acts 1947, 50th Leg., p. 346, ch. 194, § 1; Acts 1951, 52nd Leg., p. 290, ch. 172, § 1; Acts 1973, 63rd Leg., p. 1611, ch. 578, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 6675a-13a.

#### Art. 6675a-13 $\frac{1}{4}$ . Costs of Manufacturing Plates, Symbols and Tabs

It is further provided that the Texas Highway Department shall reimburse the Texas Department of Corrections for the cost of manufacturing motor vehicle license plates, symbols, tabs, or other devices to be attached to motor vehicle license plates as provided herein and said Department of Corrections shall be reimbursed as license plates, symbols, tabs, or other devices are delivered and invoices are rendered to the Highway Department. At the time manufacture is started, the State Board of Control or its successor shall fix a price to be paid per license plate, symbol, tab, or other device, and shall use as the basis for such price the costs of metal, paint, other materials purchased, the inmate maintenance cost per day, overhead expense, miscellaneous charges, and the amount of profit previously approved for such work, provided however that the annual profit to the Texas Department of Corrections from all contracts entered into for the manufacture of license plates or related manufacturing as pre-

viously stated, shall not be less than the amount of said profit received by the Texas Department of Corrections for the manufacture of 1974 State of Texas license plates.

[Acts 1973, 63rd Leg., p. 1613, ch. 578, § 5, eff. Aug. 27, 1973.]

#### Art. 6675a-13 $\frac{1}{2}$ . Designs and Specifications of Reflectorized Plates, Symbols and Tabs

(a) The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia with the requirement, however, that all license plates shall be made with a reflective material so as to be a reflectorized safety license plate. The reflectorized material shall be of such a nature as to provide effective and dependable brightness in the promotion of highway safety during the service period of the license plate issued.

(b) Thirty cents (30¢) shall be added to the cost of each license plate or set of plates, symbol, tab, or other device used as the legal registration insignia, purchased for 1968 licenses, and licenses for each year thereafter. Such funds collected shall be used by the State Highway Department for the purpose of purchasing equipment and material for the production and manufacturing of reflectorized license plates, as provided in Subsection (a) of this Act for the calendar year of 1969 and thereafter. The purchase of such reflective material shall be submitted to the State Board of Control for approval.

(c) The provisions of Subsection (a) of this Act requiring the reflectorizing of license plates shall be effective starting with the issuance of license plates for the calendar year 1969.

[Acts 1933, 43rd Leg., p. 547, ch. 178, § 2; Acts 1943, 48th Leg., p. 56, ch. 51, § 4; Acts 1945, 49th Leg., p. 31, ch. 22, § 4; Acts 1947, 50th Leg., p. 346, ch. 194, § 4; Acts 1967, 60th Leg., p. 1051, ch. 461, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1612, ch. 578, § 2, eff. Aug. 27, 1973.]

#### Art. 6675a-13a. Replacement Number Plates

The owner of a registered motor vehicle may obtain from the Department through the County Tax Collector replacement number plates for such vehicle by filing with said collector an affidavit showing that said number plate or plates have been lost, stolen or mutilated, and by paying a fee of one dollar for each set of plates issued. In case one or more plates are left in possession of such owner same shall be returned to the Tax Collector when making this affidavit. Said affidavit shall state that such plate or plates have been lost, stolen or mutilated and will not be used on any vehicle owned or operated by the person making this affidavit. No Tax Collector shall issue replacement plates without requiring compliance with the provisions of this Section.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 13a.]

**Art. 6675a-13b. Registration for Branch Office**

In all counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal Census, the County Tax Collector may establish a suboffice or branch office at one or more places in the county other than at his office in the county courthouse for the purpose of making sales of motor vehicle license plates, and the County Tax Collector shall have authority to appoint a Deputy to make such sales in the same manner and with the same authority as though they were made in the office of the County Tax Collector, and the report of all of such sales shall be made through the office of the County Tax Collector just as though such sales were actually made in his office.

[Acts 1941, 47th Leg., p. 545, ch. 340, § 1.]

**Art. 6675a-13c. Branch Offices and Deputies for Sale of License Plates; Bond; Report**

The commissioners court in any county may authorize the county tax collector to establish a suboffice or branch office at one or more places in the county other than at the county courthouse for the purpose of making sales of motor vehicle license plates. The county tax collector may be authorized to appoint a deputy to make sales in the same manner and with the same authority as though done in the office of the county tax collector. The deputy shall be subject to the bond requirements of Article 7252, Revised Civil Statutes of Texas, 1925, as amended. The report of all license plate sales shall be made through the office of the county tax collector as though done in his office.

[Acts 1971, 62nd Leg., p. 70, ch. 36, § 1, eff. March 22, 1971.]

**Art. 6675a-14. Distribution of Funds Between State and Counties**

Provided, further, that if the method of distributing between the State and the counties the funds collected under this Act shall be declared invalid because of inequality of collection or distribution of motor vehicle license fees, then said funds shall be distributed sixty (60%) per cent to the counties making the collections and forty (40%) per cent be remitted to the State in the same manner as herein provided.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 15.]

**Art. 6675a-15. Payment of Registration Fee by Check Without Funds; Seizure by Sheriff or Other Officer**

Whenever the tax collector or assessor or collector of taxes shall receive from any person a check and/or draft drawn upon any bank or trust company in payment of the registration license fee or fees and license number plates for the current year on any motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car and such check and/or draft shall be

returned unpaid to such tax collector or assessor and collector of taxes on account of insufficient funds, or no funds, in such bank or trust company to the credit of the drawer thereof, it shall be the duty of such tax collector or assessor and collector of taxes to immediately certify under his official seal, accompanied by said check, the sheriff or any constable or highway patrolman in his county of such fact, giving such officer the name and address of such person who gave him such check and/or draft and the number and make of such motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car. Such officer, upon receiving any such complaint from the tax collector or assessor and collector of taxes shall be authorized, and it shall immediately become his duty, to find such person, if in his county, and demand of such person the immediate redemption of such check and/or draft. Should any person fail and/or refuse to so redeem any such check and/or draft, theretofore given a tax collector or assessor and collector of taxes in payment of any license fee and license number plates mentioned in this Act and returned unpaid to such tax collector, then any sheriff, or any officer mentioned herein, shall be authorized, and it shall be his duty, to forthwith seize and remove from the motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car, wherever found, the license number plates theretofore issued to the owner thereof, and such officer shall forthwith return such license number plates so seized to the office of the tax collector or assessor and collector of taxes issuing same.

[Acts 1935, 44th Leg., p. 683, ch. 290, § 1.]

**Art. 6675a-16. Agreements With Other States Regarding Exemption From Registration Fees; Punishment for Violation**

(a) In addition to and regardless of the provisions of this Act, or any other Act relating to the operation of motor vehicles over the public highways of this State by non-residents, the State Highway Department acting by and through the State Highway Engineer is hereby authorized to enter into agreements with duly authorized officials of other States exempting the residents of such other States using the public highways of this State from the payment of registration fees for such periods or extensions of time as may be granted residents of Texas using the public highways of such other State.

(b) This section shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this section and any other Act on this subject, the provisions of this section shall prevail.

(c) Any person owning or operating a vehicle not registered in this State, in violation of the terms of any agreement made under this section, or in the absence of any agreement, in violation of the applicable registration laws of this State, shall be guilty of a misdemeanor

and upon conviction shall be fined any sum not exceeding Two Hundred (\$200.00) Dollars.  
[Acts 1941, 47th Leg., p. 144, ch. 110, § 14.]

**Art. 6675a-16a. Penalty for Violation of Act**

Any person violating any provisions of this Act for the violation of which no other penalty is prescribed shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 14f.]

**Art. 6675a-17. Transfer of Surplus Funds From Registration Fees**

In all counties of this State having surplus funds from revenues derived from motor vehicle registration fees which each said county is authorized to retain under the laws of the State of Texas, and where any such county or counties are not levying a tax for the building and maintenance of roads and bridges for such county or counties, the Commissioners Court of said county or counties is hereby authorized to transfer such surplus funds to any other county fund or funds which such Court may from time to time designate, and to expend such surplus funds for any other use or purpose.

[Acts 1945, 49th Leg., p. 273, ch. 202, § 1.]

**Art. 6675b-1. Operating Unregistered Vehicle**

Whoever operates upon any public highway a motor vehicle which has not been registered as required by law shall be fined not to exceed two hundred dollars.

[1925 P.C.]

**Art. 6675b-2. Operating Under Improper License**

Whoever operates upon a public highway a motor vehicle under a license, however obtained, for a class other than that to which such vehicle properly belongs, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-3. Motorcycle Without Seal**

Any person operating, or as owner permitting to be operated, on any public highway any motorcycle during any calendar year to which there is not attached a registration seal assigned to said motorcycle, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-4. Unauthorized Distinguishing Seal**

Whoever obtains a distinguishing seal for a motor vehicle or motorcycle from any source other than the State Highway Department or its authorized agents, unless authorized by law, shall be fined not less than twenty-five dollars.

[1925 P.C.]

**Art. 6675b-5. Sale of Imitation Seal or Number**

Whoever sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department shall be fined not less than twenty-five dollars.

[1925 P.C.]

**Art. 6675b-6. Must Have Own Number and Seal**

Whoever shall operate, or as owner permit to be operated upon a public highway a motor vehicle with a number plate or seal issued for a different motor vehicle attached thereto shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-7. Wrong or Unclean Number Plate**

No person shall attach to or display on any motor vehicle any number plate or seal assigned to a different motor vehicle or assigned to it under any other motor vehicle law other than by the State Highway Department, or any registration seal other than that assigned for the current year, or a homemade or fictitious number plate or seal. All letters, numbers and other identification marks shall be kept clear and distinct and free from grease or other blurring matter so that they may be plainly seen at all times during daylight. Whoever violates any provision of this article shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Arts. 6676 to 6683. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

**Art. 6684. Disputed Classifications**

The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor.

[Acts 1925, S.B. 84.]

**Art. 6685. Transfer Fees**

When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he shall then be regarded as the owner thereof and amenable to the provisions of this law.

[Acts 1925, S.B. 84.]

**Art. 6686. Dealer's License; Notice of Sale or Transfer; Temporary License Plates**

(a) Dealer's and Manufacturer's License Plates for Unregistered Motor Vehicles, Motorcycles, House Trailers, Trailers, and Semitrailers.

(1) Dealer's License. Any dealer in motor vehicles, motorcycles, house trailers, trailers, or semitrailers doing business in this State may, instead of registering each vehicle he operates or permits to be operated for any reason upon the streets or public highways, apply for and secure a general distinguishing number which may be attached to any such vehicle he owns and operates or permits to be operated unregistered. A dealer within the meaning of this Act means any person, firm, or corporation customarily engaged in the business of buying, selling, or exchanging motor vehicles, motorcycles, house trailers, trailers, or semitrailers at an established and permanent place of business; provided, however, that at each such place of business a sign in letters at least six (6) inches in height must be conspicuously displayed showing the name of the dealership under which such dealer is doing business, and that each such place of business must have an office and sufficient space to display at least one (1) vehicle.

(2) Manufacturer's License. Any manufacturer of motor vehicles, motorcycles, house trailers, trailers, or semitrailers in this State may, instead of registering each new vehicle he may wish to test upon the streets or public highways, apply for and secure a general distinguishing number which must be attached to any such vehicle sent unregistered upon the highways for the purpose of testing; provided, however, that no load may be carried upon commercial motor vehicles so tested. A manufacturer within the meaning of this Act means any person, firm, or corporation who manufactures or assembles in this State new motor vehicles, motorcycles, house trailers, trailers, or semitrailers.

(3) Buyer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard numbers, corresponding to such dealer's license number, which may be used by a buyer to operate an unregistered vehicle he purchased from said dealer for a period of ten (10) days from the date of purchase; provided, however, that a dealer may issue only one (1) buyer's tag to a purchaser for each unregistered vehicle said dealer sells. The specifications, color, and form of such buyer's cardboard tag shall be prescribed by the Department; provided, however, that each dealer shall be responsible for the safekeeping and distribution of all cardboard tags obtained by him; and furthermore, each dealer is responsible for showing in ink on each buyer's cardboard tag he issues the actual date of sale of each unregistered vehicle together with other information asked for thereon.

(4) Dealer's Temporary Cardboard Tags. Each dealer holding a current dis-

tinguishing number may issue temporary cardboard numbers, corresponding to such dealer's license number, which may only be used by such dealer or his employees for the following purposes:

[a] to demonstrate or cause to be demonstrated his unregistered vehicles to prospective buyers only for the purpose of sale; provided, however, that no provision of this Act shall be construed to prohibit a dealer from permitting a prospective buyer to operate such vehicles in the course of demonstration.

[b] to convey or cause to be conveyed his unregistered vehicles from the dealer's place of business in one part of the State to his place of business in another part of the State, or from his place of business to a place to be repaired, reconditioned, or serviced, or from the point in this State where such vehicles are unloaded to his place of business, including the moving of such vehicles from the State line to his place of business, and such vehicles displaying such tags while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.<sup>1</sup>

Such tags shall not be used to operate vehicles for the personal use of a dealer or his employees. Whenever a dealer sells an unregistered vehicle to a retail purchaser, it shall be such dealer's responsibility to remove the Dealer's Temporary Cardboard Tag and to display the Buyer's Temporary Cardboard Tag thereon pursuant to Subsection (3) of this Act. The specifications, form, and color of such dealer's cardboard tags shall be prescribed by the Department.

<sup>1</sup> Article 6701d, §§ 140, 141.

(5) Cancellation of License. It shall be the duty of the Department to cancel the dealer's or manufacturer's license issued to a person, firm or corporation when such license was obtained by submitting false or misleading information; and the Department is hereby authorized to cancel dealer's licenses whenever a person, firm, or corporation fails, upon demand, to furnish within thirty (30) days to the Department satisfactory and reasonable evidence of being customarily engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers at either wholesale or retail; and, it is also provided that the Department may cancel dealer's or manufacturer's licenses issued under this Act for the violation of any provisions of this Act or for the misuse or for allowing the misuse of any cardboard tag authorized under this Act; and, fur-

thermore, the Department is hereby authorized to cancel such licenses whenever a dealer refuses to show on such tags the date of sale or any other reasonable information required to be shown thereon by the Department; provided, however, that nothing in this Act shall be construed to prohibit new entries into the business of buying, selling, exchanging, or manufacturing such vehicles; and provided further that any dealer or manufacturer whose license was cancelled under the terms of this Act shall, within ten (10) days, surrender to a representative of the Department any and all license plates, cardboard tags, license stickers, or facsimiles thereof, and receipts issued pursuant to this Act. If any dealer or manufacturer shall fail to surrender to the Department the license plates, the cardboard tags, license stickers, or facsimiles thereof, and receipts as provided herein, the Department shall forthwith direct any peace officer to secure possession thereof and to return same to the Department. Whenever a dealer's or manufacturer's license is cancelled under the provisions of this Act, all benefits and privileges afforded to Texas licensed dealers or manufacturers under Article 1436-1, Penal Code of Texas, are automatically cancelled, also.

(6) Limited Use of Dealer's Plates and Tags. The use of dealer's license or facsimiles thereof is prohibited on service or work vehicles or on commercial vehicles carrying a load; provided, however, that a boat trailer carrying a boat will not be considered to be a commercial vehicle carrying a load, and a dealer complying with the provisions of this Act may affix to the rear of a boat trailer he owns or to the rear of a boat trailer he sells such dealer's distinguishing number or cardboard facsimiles thereof pursuant to the provisions of Subsections (1), (3) and (4) of this Act; and, further provided, that the term "commercial vehicle carrying a load" shall not be construed to prohibit the operation or conveyance of unregistered vehicles by licensed dealers (or buyers therefrom) utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, pursuant to Subsections (3) and (4) of this section.

(7) Fees and Forms. Each applicant for a dealer's or manufacturer's general distinguishing number shall pay to the Department an annual fee of Twenty-five Dollars (\$25) for the first such number desired and Ten Dollars (\$10) for each additional number desired, and all such fees shall be deposited in the State Highway Fund. Applications for a dealer's or manufacturer's license plate shall be made in writing on forms prescribed and furnished by the Department, and such applications

shall require any pertinent information to insure proper enforcement and administration; and, furthermore, each such application shall contain a statement to the effect that the applying dealer agrees to permit the Department to examine during working hours the ownership papers for each vehicle, registered or unregistered, in the possession of said dealer or under his control. All facts stated in an application shall be sworn to before an officer authorized to administer oaths and no dealer's or manufacturer's distinguishing number shall be issued until this Act is complied with. All such applications for dealer's or manufacturer's licenses, accompanied by the prescribed fee, should be made to the Department by January 15 of each year and the license plates for those applications meeting the provisions of this Act will be mailed to the applicants during the succeeding months of February and March. Each dealer's and manufacturer's license shall expire at the expiration of the "Motor Vehicle Registration Year."

(8) Defining Vehicle. The term "vehicle" as used in this Act shall be construed to mean motor vehicle, motorcycle, house trailer, trailer, and semitrailer as defined in Article 6675a-1, Revised Civil Statutes.

(9) Defining Department. The term "Department" as used in this Act means the "Texas Highway Department."

(10) Since the operation of vehicles registered in other states is restricted to residents of such states, a dealer who purchases vehicles displaying out-of-state license plates must immediately remove the license plates from such vehicles; and, furthermore, no dealer shall operate or allow to be operated in Texas, for any reason whatsoever, a vehicle displaying out-of-state license plates.

(11) Rules and Regulations. The Department is hereby authorized to promulgate reasonable rules and regulations for the orderly administration of this Act.

(12) Change of Address. It shall be the duty of any dealer or manufacturer as defined in this Act and to whom dealer's or manufacturer's license plates have been issued to notify the Department of a change of address within ten (10) days after such address change.

(13) Display of Dealer's License Plates. The general distinguishing number and all temporary cardboard tags issued pursuant to this Act shall be displayed in a manner conforming to the Department's regulations pertaining to the display of such plates and tags on unregistered vehicles operating on the streets or highways of this State.

(14) Unauthorized Reproduction of Temporary Cardboard Tags. No one other than a dealer as defined in this Act and to

whom a current distinguishing number has been issued shall be authorized to produce or reproduce by any means whatsoever a Buyer's or Dealer's Temporary Cardboard Tag, and, furthermore, no person, firm or corporation may operate vehicles displaying unauthorized cardboard tags. Any violation of the provisions of this Subsection shall be deemed a misdemeanor and the violator, upon conviction, shall be fined not less than Twenty-five Dollars (\$25) and not more than Two Hundred Dollars (\$200) and all costs of court.

(15) Penalty. Any dealer or manufacturer violating any provisions of this Act for the violation of which no other penalty is prescribed shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) and all the costs of court.

(b) Any person, firm or corporation engaged in this State in the business of transporting and delivering by means of the full mount method, the saddle mount method, the tow bar method, or any other combination thereof, and under their own power, new vehicles and other vehicles, including house trailers, trailers and semi-trailers, from the manufacturer or any other point of origin to any point of destination within the State of Texas, shall make application to the State Highway Commission for a drive-a-way in-transit license. This application for annual license shall be accompanied by a registration fee of Fifty Dollars (\$50) and shall contain such information as the State Highway Commission may require. Upon the filing of the application and the payment of the fee, the State Highway Commission shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle or vehicles from the manufacturer, or any point of origin, to any point of destination within the State of Texas. Additional number plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the State Highway Commission upon the payment of a fee of Five Dollars (\$5) for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the tow bar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this Act and upon conviction be fined not less than Fifty Dollars (\$50) and not more than Two Hundred Dollars (\$200) and all the costs of Court. Each day so operating without securing the license and plates as required herein

shall constitute a separate offense within the meaning of this Act. The funds collected herein shall be paid into the State Highway Fund of this State.

(c) Every motor vehicle that has been driven under its own power, or towed by another vehicle from the point where manufactured outside this State for the purpose of sale within this State, shall have affixed to the windshield or front thereof in plain view a sticker not less than three inches in diameter stating that such vehicle has been driven or towed from point where manufactured. Such notice shall remain on such vehicle until the sale thereof by the dealer.

(d) Manufacturer to Give Notice of Sale of<sup>1</sup> Transfer. Every manufacturer or dealer, upon transferring a motor vehicle, trailer, or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the Registration Division of the State Highway Department upon the official form provided by the State Highway Department. Every such notice shall contain the date of such transfer, names and addresses of the transferrer and transferee and such description of the vehicle as may be called for in such official form.

<sup>1</sup> So in Session Laws. Probably should read "or."

(d)-1. The Department is authorized to issue or cause to be issued temporary license plates made of cardboard or other similar material to any person, firm, or corporation, other than manufacturers, dealers, or dealers' representatives, of motor vehicles, trailers, and semitrailers, authorizing them to drive or operate any new vehicle, provided same is not used to transport property, upon the public highways of this State from the manufacturer's place of business in another State or Country after having purchased said vehicle from a dealer in this State, and to drive or operate any new vehicle from another State or Country after having purchased said vehicle from a dealer in the other State or Country. It is further provided that the said temporary license plate shall not be valid for a period longer than thirty (30) days from date of issuance and that the Department shall place or cause to be placed on said license plates the date of expiration, and the type of vehicle for which each said temporary license plate is issued at the time it is issued. And provided, a fee of Three Dollars (\$3) shall be paid for each plate and that only one (1) plate shall be issued for each vehicle.

(e) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle.

(f) Any person found guilty of violating any of the provisions of this Act shall, upon conviction, be fined not less than Fifty (\$50.00) Dollars and not more than One Hundred Fifty (\$150.00) Dollars, and all costs of court.

[Acts 1917, p. 423; Acts 1927, 40th Leg., p. 296, ch. 211, § 1; Acts 1937, 45th Leg., p. 302, ch. 158, § 1; Acts 1939, 46th Leg., p. 613, ch. 5, § 1; Acts 1947, 50th

Leg., p. 300, ch. 182, § 1; Acts 1961, 57th Leg., p. 36, ch. 23, § 1; Acts 1963, 58th Leg., p. 45, ch. 30, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 170, ch. 69, § 1, eff. April 3, 1969; Acts 1971, 62nd Leg., p. 944, ch. 156, § 1, eff. May 11, 1971; Acts 1973, 63rd Leg., p. 753, ch. 328, § 1, eff. June 12, 1973.]

**Saved From Repeal**

*Acts 1971, 62nd Leg., p. 99, ch. 51, enacting the Texas Motor Vehicle Commission Code, provided in section 2 that nothing herein shall be construed to repeal or amend any provisions of this article. See article 4413 (36) note.*

Acts 1971, 62nd Leg., p. 944, ch. 156, which by section 1 amended subsection (a)(6) of this article, in sections 2 and 3 provided:

"Sec. 2. All laws in conflict herewith are hereby repealed.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 4 of the 1971 amendatory act, an emergency provision, provided in part:

"\* \* \* the Attorney General of Texas recently interpreted the terms and provisions of Subsection (6) of Article 6686(a), Revised Civil Statutes of Texas, 1925, so as not to authorize the operation or conveyance by licensed dealers (or buyers therefrom) of their unregistered vehicles by the full mount, saddle mount, tow bar method or any combination thereof, and \* \* \* such opinion of the Attorney General of Texas has brought about a chaotic, unintended, nonuniform and confused condition in administering such law not heretofore existing \* \* \*"

Art. 6687. Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1785, ch. 466, § 22

Art. 6687a. Repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 45

Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

**ARTICLE I—WORDS AND PHRASES  
DEFINED**

**Definition of Words and Phrases**

Sec. 1. The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this title.

(a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor, machinery for maintaining or cleaning streets, or a motor-assisted bicycle.

(d) "School Bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Motor Bus" means every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons between or through two (2) or more incorporated cities and towns for compensation (or hire), whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and towns and suburban additions thereto.

(f) "Farm Tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(g) "Implements of Husbandry" include farm implements, machinery and tools as used in tilling the soil, namely: cultivators, farm tractors, reapers, binders, combines, or mowing machinery, but shall not include any automobile or truck.

(h) "Director" means the Director of the Department of Public Safety of the State of Texas.

(i) "Department" means the Department of Public Safety of the State of Texas, acting directly or through its authorized officers and agents, except in such Sections of this Act in which some other State Department is specifically named.

(j) "Person" includes every natural person, firm, copartnership, association, or corporation.

(k) "Pedestrian" means any person afoot.

(l) "Driver" means every person who drives or is in actual physical control of a vehicle.

(m) "Operator" means every person, other than a chauffeur or commercial operator, who is in actual physical control of a motor vehicle upon a highway.

(n) "Commercial Operator" means every person who is the driver of a motor vehicle designed or used for the transportation of property, including all vehicles used for delivery purposes, while said vehicle is being used for commercial or delivery purposes.

(o) "Chauffeur" means every person who is the driver for wages, compensation, or hire, or for fare, of a motor vehicle transporting passengers.

(p) "Nonresident" means every person who is not a resident of this state.

(q) "Highway" means the entire width between property lines of any road, street,

way, thoroughfare, or bridge in this state not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the state has legislative jurisdiction under its police power.

(r) "The suspension or revocation of a license" shall be considered as a penalty and subject to executive clemency as any other fine or punishment.

(s) "Motor-assisted bicycle" has the meaning attributed to it in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).<sup>1</sup>

<sup>1</sup> See article 6701d, § 2(n).

## ARTICLE II—ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

### Drivers Must Have License

Sec. 2. (a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed.

### What Persons are Exempt From License

[Text of section 3 as amended by Acts 1971, 62nd Leg., p. 987, ch. 175, and Acts 1971, 62nd Leg., p. 1399, ch. 379]

Sec. 3. The following persons are exempt from license hereunder:

1. Every person in the service of the United States when operating an official motor vehicle in such service;

2. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway, and while driving or operating any commercial motor vehicle temporarily on the highway in an emergency;

3. A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state may operate a motor vehicle in this State only as an operator;

4. Any nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid operator's

license, chauffeur's license, commercial operator's license or similar license issued to him by his home state (as well as nonresidents whose home state does not require the licensing of operators) shall not be required to secure such license under this Act, provided the state or country of his residence likewise recognizes such licenses issued by the State of Texas and exempts the holders thereof from securing such licenses from such foreign state or country. The purpose of this section is to extend full reciprocity to citizens of other states and foreign countries which extend like privileges to citizens of the State of Texas.

It shall not be necessary for an employee of any incorporated city, town or village of this State or county of this state when holding an operator's permit to obtain a chauffeur's license in order to operate an official motor vehicle in the service of such incorporated city, town, village or county.

4a. A person operating a commercial motor vehicle, the gross weight of which does not exceed six thousand (6,000) pounds as that term is defined in Article 6675a-6 of the Revised Civil Statutes of Texas, operated in the manner and bearing current farm registration plates as provided in Article 6675a-6a of the Revised Civil Statutes, who holds an operator's license, shall not be required to obtain a commercial operator's license.

4b. A person with an operator's license may operate a motor vehicle with a manufacturer's rated carrying capacity not to exceed 4,000 pounds rented by him for ten (10) days or less for the purpose of transporting household goods or office furniture or equipment owned by such person.

5. Any nonresident who is at least eighteen (18) years of age, whose home state does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home state of such nonresident.

6. Any person whose license expires while he is in military service in the armed forces of the United States in Southeast Asia may operate a motor vehicle without a license for ninety (90) days after he receives an honorable discharge, or for ninety (90) days after the date on which he was placed on leave, furlough, or other authorized absence from his post of duty.

7. A person who raises agricultural commodities, his spouse, and his children, may transport commodities they have raised, by the most direct practical route to the nearest market, without possessing a commercial operator's license if the driv-

er has in his possession a valid operator's license.

[Text of section 3 as amended by Acts 1971, 62nd Leg., p. 1934, ch. 586, § 1]

Sec. 3. The following persons are exempt from license hereunder:

1. Every person in the service of the United States when operating an official motor vehicle in such service;

2. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway, and while driving or operating any commercial motor vehicle temporarily on the highway in an emergency;

3. A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state may operate a motor vehicle in this State only as an operator;

4. Any nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid operator's license, chauffeur's license, commercial operator's license or similar license issued to him by his home state shall not be required to secure such license under this Act, provided the state or country of his residence likewise recognizes such licenses issued by the State of Texas and exempts the holders thereof from securing such licenses from such foreign state or country. The purpose of this section is to extend full reciprocity to citizens of other states and foreign countries which extend like privileges to citizens of the State of Texas.

It shall not be necessary for an employee of any incorporated city, town, or village of this State or county of this State when holding an operator's permit to obtain a chauffeur's license in order to operate an official motor vehicle in the service of such incorporated city, town, village, or county.

5. Any person operating a truck with a manufacturer's rated carrying capacity not to exceed two thousand (2,000) pounds, which is intended to include trucks commonly known as pickup trucks, panel delivery trucks, station wagons, and carryall trucks, who holds an operator's license shall not be required to obtain a commercial operator's license;

6. Any nonresident who is at least eighteen (18) years of age, whose home state does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home state of such nonresident;

7. A nonresident on active duty in the armed forces of the United States who has

a valid license issued by his home state and such nonresident's spouse or dependent son or daughter who has a valid license issued by such person's home state;

8. The validity of any Texas driver's license held by any person who enters or is in the United States armed forces shall continue in full force and effect so long as the service continues and the person remains absent from this State, and for not to exceed ninety (90) days following the date on which the licensee is honorably separated from such service or returns to this State, unless the license is sooner suspended, canceled, or revoked for cause as provided by law;

9. Any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States may operate a motor vehicle in this State for a period not more than ninety (90) days from the date of his return to the United States.

10. A person with an operator's license may operate a motor vehicle with a manufacturer's rated carrying capacity not to exceed four thousand (4,000) pounds rented by him for ten (10) days or less for the purpose of transporting household goods or office furniture or equipment owned by that person.

#### New State Residents; Time to Obtain License

Sec. 3A. A person who enters this State as a new resident may operate a motor vehicle in this State only as an operator for thirty (30) days after entering the State if he is at least sixteen (16) years of age and has in his immediate possession a valid operator's, chauffeur's, or commercial operator's license issued to him by his state or country of previous residence. If a person claiming to be covered by this section is prosecuted for driving without a valid driver's license and the prosecution alleges that he has resided in this State for more than thirty (30) days, he must prove by a preponderance of the evidence that he has not resided in the State for more than thirty (30) days.

#### Who May Not Be Licensed

Sec. 4. The Department shall not issue any license hereunder:

[Text of subsections 1 to 3 as amended by Acts 1971, 62nd Leg., p. 1181, ch. 282]

1. To any person, as an operator, who is under the age of eighteen (18) years. The Department may license an applicant as an operator, who is sixteen (16) years of age or older where: (a) the applicant has completed and passed a driver training course approved by the Department; or (b) before June 1, 1969, the local school superintendent certifies that such course is not taught at the school regularly attended by such applicant. A license shall not be issued to any applicant who has not passed the examination required in Sec-

tion 10 of Article 6687b, Vernon's Texas Civil Statutes. The Department shall carry out the duties required of it by the provisions of this Act in any manner that will expedite the performance of such duties, and in a manner that will provide the greatest convenience for the public; provided that any person who has satisfactorily completed and passed the classroom phase of an approved driver education course may apply to the Department for an instruction permit if he is at least fifteen (15) years of age, and the Department may, in its discretion, after the applicant has successfully passed all parts of the driver examination required in Section 10 of this Act, other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant while having such permit in his immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed operator, commercial operator, or chauffeur, who is at least twenty-one (21) years of age and has had at least one (1) year of driving experience and who is occupying a seat beside the driver; and provided further the Department may issue a license to any person who has attained the age of fifteen (15) years where, in the opinion of the Department, (1) it appears that the failure or refusal to issue such license to any such person will work an unusual economic hardship on the family of the applicant for the license, or (2) it appears that a license should be granted to the applicant because of the sickness or illness of members of the family of the applicant, or (3) a failure to issue such license would be detrimental to the general welfare of the applicant or of his or her family, or (4) it appears that the applicant meets the requirements of Subsection (b), Section 12 of Article 6687b, Vernon's Texas Civil Statutes, and provided further that the applicant has taken and passed the examination required in Section 10 of Article 6687b, Vernon's Texas Civil Statutes. "General welfare of the applicant" as used in (3) above includes but is not limited to those persons between fifteen (15) and eighteen (18) years of age who are regularly enrolled in a vocational education program and who in the opinion of the Department require a driver's license to pursue that program. In no event shall an operator's license of any class be issued to any person of less than fifteen (15) years of age. Any person who has been refused a driver's license under the terms of this paragraph may appeal to the county court in the county in which he is a resident, where the matter may be tried upon request of petitioner or respondent. And provided further that a special combination operator and commercial operator restricted license may be issued to any person between the ages fifteen (15) and

eighteen (18) years to operate only a motorcycle, motor scooter or motorized bicycle, the piston displacement of any of which does not exceed 100 cc. This special restricted license shall be issued by the Driver's License Division of the Department on application to the Department in accordance with Section 7 of Article 6687b, Vernon's Texas Civil Statutes; shall be subject to the requirements of Section 10 of Article 6687b, Vernon's Texas Civil Statutes, and to other provisions of this Act in the same manner as operator's licenses; and shall be in the form as may be prescribed by the Department.

2. To any person, as a commercial operator, who is under eighteen (18) years of age, unless he has completed the approved driver training course referred to in Subdivision 1 of this Section; and in no case shall a commercial operator's license be issued to one under seventeen (17) years of age;

3. To any person, as a chauffeur, who is under eighteen (18) years of age, unless he has completed the approved driver training course referred to in Subdivision 1 of this Section; and in no case shall a chauffeur's license be issued to one under seventeen (17) years of age;

Sec. 4. The Department shall not issue any license hereunder:

*[Text of subsections 1 to 3 as amended by Acts 1971, 62nd Leg., p. 1935, ch. 536, § 2]*

1. To any person who is under the age of fifteen (15) years;

2. To any person, as a commercial operator, who is under eighteen (18) years of age, unless he has completed the approved driver training course referred to in Section 7; and in no case shall a commercial operator's license be issued to one under seventeen (17) years of age;

3. To any person, as a chauffeur, who is under eighteen (18) years of age, unless he has completed the approved driver training course referred to in Section 7; and in no case shall a chauffeur's license be issued to one under seventeen (17) years of age;

4. To any person, as an operator, a commercial operator, or a chauffeur, whose license has been suspended, during such suspension;

5. To any person, as an operator, commercial operator, or chauffeur, who is shown to be an habitual drunkard or addicted to the use of narcotic drugs or other drugs that render a person incapable of driving;

6. To any person, as an operator, commercial operator, or chauffeur, who has previously, by a court of competent jurisdiction, been adjudged insane or an idiot, imbecile, or feebleminded, and who has not, at the time of such application, been

restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent;

7. To any person, as an operator, commercial operator, or chauffeur, who is required by this Act to take an examination, unless such person shall have successfully passed such examination;

*[Text of subsection 8 as amended by Acts 1971, 62nd Leg., p. 1182, ch. 282]*

8. To any person when in the opinion of the Department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs in the English language; provided, however, no person shall be refused a license because of any physical defect unless it be shown by common experience that such defect incapacitates him from safely operating a motor vehicle;

*[Text of subsection 8 as amended by Acts 1971, 62nd Leg., p. 1936, ch. 586, § 2]*

8. To any person when in the opinion of the Department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to identify and understand highway warnings or direction signs in the English language; provided, however, no person shall be refused a license because of any physical defect unless it be shown by common experience that such defect incapacitates him from safely operating a motor vehicle;

9. To any person when the Department has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare;

10. To a person who applies for or receives public assistance as a needy blind person.

**Special Restrictions on Drivers of School Buses and Public or Common Carrier Motor Vehicles**

Sec. 5. (a) No person who is under the age of eighteen (18) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor until he has been licensed as a chauffeur. It shall be unlawful for any person to be employed to drive a motor vehicle while in use as a school bus for the transportation of pupils who has not undergone a physical examination which reveals his physical and mental capabilities

to safely operate a school bus. Such physical examinations shall be conducted annually for each driver, thereafter. A pre-employment driver license check shall have been made with the Texas Department of Public Safety prior to the employment and the person's driving record must be acceptable according to standards developed jointly by the Central Education Agency and the Texas Department of Public Safety. Effective at such date and under provisions as may be determined by the Central Education Agency, the driver of a school bus shall have in possession a certificate stating he is enrolled in, or has completed, a driver training course in school bus safety education, which course has been approved jointly by the Central Education Agency and the Texas Department of Public Safety. The bus driving certificate shall remain valid for a period of three years. It shall be unlawful for any person presently employed as a school bus driver to continue to drive a school bus who does not obtain a physical examination prior to the beginning of the 1973-74 school year and whose driver's license check has not been made by his employer prior to the 1973-74 school year. Such physical and driver's license examinations shall meet the criteria set forth in this Act.

(b) No person who is under the age of twenty-one (21) years shall drive any motor vehicle except a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. No person who is under the age of nineteen (19) years shall drive a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur.

**Junior College Buses; Qualifications of Drivers**

Sec. 5A. Persons eighteen (18) years of age or older who have been licensed as chauffeurs by the Department of Public Safety shall be authorized to drive any motor vehicle while in use as a school bus for the transportation of junior college students and employees to and from school or official school activities; providing further that such school bus operated by a junior college may also transport students of any public school where convenient, providing that wherever students of any local public school district are transported to and from school on any bus operated by a junior college, and the driver of said bus is under twenty-one (21) years of age, in that event the selection of any person to drive or operate such school bus must be approved by the principal of the local public school whose students are being so transported. All statutes now prohibiting the operation of such motor vehicles for the transportation of junior college students and employees by said persons eighteen (18) years of age or over, are suspended in so far as junior colleges are concerned. Provided, however, that this Act will not apply to drivers of vehicles operated under permit or certificate issued by the Railroad Commission of Texas.

#### Motorcycle Operator's License

Sec. 5B. (a) "Operator" and "operator's license" as used in other sections of this Act, include "motorcycle operator" and "motorcycle operator's license" respectively.

(b) Beginning January 1, 1968, no person unless expressly exempted by this Act, shall operate a motorcycle upon a highway in this State unless he has a valid license as a motorcycle operator. An operator's license issued before January 1, 1968, is valid for operating a motorcycle until the license expires.

(c) In addition to the examination prescribed by Section 10 of this Act, the Department shall require an applicant for a motorcycle operator's license to operate a motorcycle in an off-street phase and an on-street mobile phase of a road test to determine his ability to exercise ordinary and reasonable control of a motorcycle. An applicant required to submit to a road test must provide a passenger vehicle and licensed driver to convey the license examiner during the road test. The Department shall refuse to give any part of the road test to an applicant who does not provide a passenger vehicle for the examiner.

#### Application for License

Sec. 6. (a) Every application for an original or renewal of an operator's, commercial operator's, or chauffeur's license shall be made upon a form furnished by the Department, and every original application shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the Department are hereby authorized to administer such oaths without charge. No officer or employee of the State shall be permitted to make any charge to administer such oaths. Every said application shall be accompanied by the required fee.

(b) Every said original application shall state the applicant's full name, place and date of birth, such information to be verified by presentation of a certified copy of the applicant's birth certificate or other documentary evidence deemed satisfactory by the Department. Such application shall also include the thumbprints, or if for any reason thumbprints cannot be taken, the index fingerprints of the applicant, and shall state the sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator, commercial operator, or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and such other information as the Department may require to determine the applicant's identity, competency and eligibility.

#### Application of Minors

Sec. 7. (a) The Department may license a person as an operator who is under the age of

eighteen (18) years, provided he is sixteen (16) years of age or older where such person has completed and passed a driver training course approved by the Department, and has passed the examination required by Section 10 of Article 6687b, Vernon's Texas Civil Statutes. The Department shall carry out the duties required of it by the provisions of this Act in any manner that will provide the greatest convenience to the public.

(b) The Department shall not grant the application of any minor under the age of eighteen (18) years for an operator's, commercial operator's, or chauffeur's license unless such application is signed by the father of the applicant, if the father is living and has the custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a minor under the age of eighteen (18) years has no father, mother, or guardian, the license shall not be issued to the minor unless his application therefor is signed by his employer or by the county judge of his residence.

#### Release From Liability

Sec. 8. Any person who has signed the application of a minor for a license may thereafter file with the Department a request that the license of said minor so granted be cancelled, which request shall be in writing and acknowledged before some officer authorized to administer oaths. Thereupon the Department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from any liability by reason of having signed such application on account of any subsequent negligence or wilful misconduct of such minor in operating a motor vehicle.

#### Revocation of License Upon Death of Person Signing Minor's Application

Sec. 9. The Department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license may cancel such license and may not issue a new license until such time as a new application, duly signed and verified, is made as required by this Act. This provision shall not apply in the event the minor has attained the age of eighteen (18) years.

#### Examination of Applicants

Sec. 10. The Department shall examine every applicant for an operator's, commercial operator's, or chauffeur's license, except as otherwise provided in this Section. Such examination shall be held in the county where the applicant resides or makes application within not more than ten (10) days from the date application is made. It shall include a test of the applicant's vision, his ability to understand highway signs in the English language regulating, warning, and directing traffic, his knowledge of the traffic laws of this State, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type which

he will be licensed to operate and such further physical and written examination as the Department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways, and provided further that the Director shall have the authority to cause to be re-examined the licensee in any case which in his judgment the licensee is incapable of operating a motor vehicle, said examination to be held in the county of the licensee's residence unless otherwise agreed to by both parties to be held elsewhere.

#### Alternate Examination for Spanish Speaking Applicants

Sec. 10A. The department shall design and administer an alternate examination for Spanish speaking applicants who are unable to take the ordinary examination in the English language. The alternate examination shall be identical in all respects to the examination given other applicants under Section 10 of this Act except that all directions and written material, other than the actual text of highway signs, shall be in Spanish. The text of highway signs shall be in English. The alternate Spanish language examination shall be available in all counties of the state.

#### Licenses Issued to Operators, Commercial Operators and Chauffeurs

Sec. 11. (a) The Department shall, upon payment of the required fee, issue to every applicant qualifying therefor an operator's, commercial operator's, or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee by the Department, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The Department may issue a temporary license without the photograph to out-of-state applicants, members in the Armed Forces, and in those situations where for any other reason the Department finds it necessary, provided, however, where such temporary license is issued it shall be valid only until the applicant shall have had time to appear and have his picture taken and a license with his photograph issued.

(c) On all provisional licenses issued under Section 11A of this Act, the photograph of the licensee shall show a side profile. On all other licenses, the photograph shall show the entire face of the licensee.

#### Provisional Licenses

Sec. 11A. Whenever the Department of Public Safety issues an original operator's, commercial operator's, or chauffeur's license to a person under twenty-one (21) years of age, the license shall be designated and clearly marked as a provisional license.

#### Restricted Licenses

Sec. 12. (a) The Department, upon issuing an operator's, commercial operator's, or chauffeur's license, shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on a motor vehicle which the licensee may operate, or mechanical attachments (glasses, artificial limbs, etc.) required on the person of the licensee.

(b) The Department shall have the authority to impose restrictions suitable to the licensee's driving ability with respect to areas, location, roads and highways within this State, or with respect to the time of day or night that the licensee shall be permitted to drive a motor vehicle or such other restrictions applicable to the licensee as the Department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(c) The Department may issue an instruction permit without photograph to any person fifteen (15) years of age or older who has satisfactorily completed and passed the classroom phase of an approved driver education course, and the Department may, in its discretion, after the applicant has successfully passed all parts of the driver examination required in Section 10 of Article 6687b, Vernon's Texas Civil Statutes, other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant while having such permit in his immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed operator, commercial operator, or chauffeur, who is at least twenty-one (21) years of age, and has at least one (1) year of driving experience and who is occupying a seat by the driver, provided, however, a person who is under twenty-one (21) years of age and is enrolled in a State approved driver education teacher preparation program may accompany a person with an instruction permit.

(d) The Department may issue a license to any person who has attained the age of fifteen (15) years where, in the opinion of the Department:

1. It appears that the failure or refusal to issue such license to any such person will work an unusual economic hardship on the family of the applicant for the license, or

2. It appears that a license should be granted to the applicant because of the sickness or illness of members of the family of the applicant, or

3. A failure to issue such license would be detrimental to the general welfare of the applicant or of his or her family, and

Provided further that the applicant has taken and passed the examination required in Section 10 of Article 6687b, Vernon's Texas Civil Statutes. "General welfare of the applicant" as used in (3) above in-

cludes but is not limited to those persons between fifteen (15) and eighteen (18) years of age who are regularly enrolled in a vocational education program and who in the opinion of the Department require a driver's license to pursue that program. In no event shall an operator's license of any class be issued to any person of less than fifteen (15) years of age. Any person who has been refused a driver's license under the terms of this paragraph may appeal to the county court in the county in which he is a resident, where the matter may be tried upon request of petitioner or respondent.

(e)(1) The Department may issue a special restricted operator's license to any person between the ages fifteen (15) and eighteen (18) years to operate only a motorcycle, motor scooter or motorized bicycle, with less than one hundred (100) cc piston displacement. This special restricted license shall be issued on application to the Department in accordance with Section 7 of Article 6687b, Vernon's Texas Civil Statutes; shall be subject to the requirements of Section 10 of Article 6687b, Vernon's Texas Civil Statutes, and to other provisions of this Act in the same manner as operator's licenses; and shall be in the form prescribed by the Department. A motor-assisted bicycle operator's license is required for operators of motor-assisted bicycles. A person must be at least fifteen (15) years old to be issued a motor-assisted bicycle operator's license. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of motor-assisted bicycles. No test involving the operation of the vehicle is required. The fee for the license is Four Dollars (\$4). All applicable provisions of this Act governing restricted operator's licenses for the operation of motorcycles only also apply to motor-assisted bicycle operator's licenses, including provisions relating to the application, issuance, duration, suspension, and cancellation of those licenses.

(2) The Department is hereby required to certify motorcycles, motor scooters and motorized bicycles to ascertain whether they exceed one hundred (100) cc piston displacement as required by this section. The Department is further authorized to establish the procedure which shall be followed to determine the cc piston displacement of the motorcycles, motor scooters and motorized bicycles. Any person, firm or corporation may submit to the Department any such motorcycle, motor scooter or motorized bicycle and make application that the same be tested as to conformity with the regulations of the Department. Upon such application being made, the Department shall cause such test to be made as may be necessary to determine whether the motorcycle, motor scooter or motorized bicycle exceeds one hundred (100) cc piston displacement. Each such

applicant shall upon the filing of his application pay to the Department a fee of fifty cents (50¢). All such fees shall be paid by the Department into the State Treasury to be deposited to the credit of the General Revenue Fund. Every model of motorcycles, motor scooters and motorized bicycles certified by the Department shall carry a metal tag showing that the Department has certified it as not exceeding one hundred (100) cc piston displacement. When the Department has reason to believe that a certified model of motorcycles, motor scooters or motorized bicycles being sold commercially exceeds one hundred (100) cc displacement, the Department may conduct a hearing as prescribed under Subsections (d) and (e), Section 108B, Chapter 303, Acts of the 54th Legislature, Regular Session, 1955 (compiled as Subsections [d] and [e] of Section 108B, Article 6701d, Vernon's Texas Civil Statutes).<sup>1</sup> The Department shall compile a list naming each model and make of motorcycles, motor scooters and motorized bicycles certified by the Department as not exceeding one hundred (100) cc piston displacement and make the list available upon request of the public and to persons who sell motorcycles, motor scooters and motorized bicycles. Any peace officer may stop and detain any motorcycle, motor scooter or motorized bicycle for the purpose of inspecting the motorcycle, motor scooter or motorized bicycle to determine if the motorcycle, motor scooter or motorized bicycle is of a model and make certified by the Department.

(3) The Department is also required to certify whether vehicles which are purported to be motor-assisted bicycles conform to the definition of that vehicle. The Department shall certify those vehicles for the same fee and under the same procedure as it certifies motorcycles, motor scooters and motorized bicycles. The Department shall compile a list of models of motor-assisted bicycles which have been certified. Every model of motor-assisted bicycles certified by the Department shall carry a metal tag showing that the Department has certified that the vehicle conforms to the definition of motor-assisted bicycle. Any peace officer may stop and detain a person operating a motor-assisted bicycle to determine if the vehicle is of a model and make certified by the Department.

(f) The Department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(g) The Department may, upon receiving satisfactory evidence of any violation of the restrictions on a license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this Act.

(h) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a license issued to him and punishable as set out in Section 44 of this Act.

<sup>1</sup> Repealed. See, now, art. 6701d, § 108(d) to (g).

## License to be Carried and Exhibited on Demand

Sec. 13. Every person shall have an operator's, commercial operator's, or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a magistrate or any officer of a court of competent jurisdiction or any peace officer. Any person who violates this Section shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than Two Hundred Dollars (\$200); for a second conviction, within one (1) year thereafter, such person shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200); upon the third or subsequent conviction within one (1) year after the second conviction such person shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than seventy-two (72) hours nor more than six (6) months, or by both such fine and imprisonment. It shall be a defense to any charge under this Section that the person so charged produce in court an operator's, commercial operator's, or chauffeur's license theretofore issued to such person and valid at the time of his arrest. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section, and it shall be the duty of the Department of Public Safety to keep a record thereof. Any peace officer may stop and detain any motor vehicle operator for the purpose of determining whether such person has a driver's license as required by this Section.

## Duplicate Licenses

Sec. 14. In the event that an operator's, commercial operator's, or chauffeur's license issued under the provisions of this Act is lost, destroyed, or there is a change in pertinent information, the person to whom the same was issued may obtain a duplicate or correction thereof upon furnishing proof satisfactory to the Department that such permit or license was lost or destroyed or upon the supplying of the required information which has changed, together with proof acceptable to the Department supporting such change, and upon the payment of a fee of One Dollar (\$1).

## Personal Identification Certificates; Fee

Sec. 14A. (a) The Department may issue personal identification certificates, similar in form but distinguishable in color from operators' licenses. Certificates issued under authority of this section shall expire on a date specified by the Department.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the Department.

(c) The Department shall levy and collect a fee of Five Dollars (\$5.00) for preparation and issuance of the certificate.

(d) Any collections in excess of costs shall be deposited in the State Treasury in the General Revenue Fund.

## ARTICLE III—FEES

## Disposition of Fees

Sec. 15. (a) All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department in Austin, Texas.

(b) One-third ( $\frac{1}{3}$ ) of all monies received for operators, commercial operators and chauffeurs license fees shall be deposited in the State Treasury in the General Revenue Fund of the State; and the remainder of all fees so collected shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

(c) Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department and may also be appropriated by the Legislature to the Traffic Safety Fund. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove.

## Unexpended Balance of Fund; Use for Plant for Department of Public Safety

Sec. 15A. The unexpended balance remaining in the Operator's and Chauffeur's License Fund on August 31, 1952, and any unexpended balance in excess of Twenty-five Thousand (\$25,000.00) Dollars in that Fund on August 31, 1953, may be used for constructing and equipping a physical plant for the Texas Department of Public Safety, as authorized in Chapter 475, Acts of the 51st Legislature, Regular Session, 1949.<sup>1</sup> All other moneys in the Operator's and Chauffeur's License Fund shall be used for the purposes stated in Section 15 of this Act, and any portion of the moneys herein authorized to be used for constructing and equipping a physical plant which is not actually used for such purpose shall be available for the purposes stated in Section 15.

<sup>1</sup> Article 4413(29a).

## Method of Disbursements

Sec. 16. All disbursements hereunder shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission and approved by one other member of the Commission or the Director, and such vouchers shall be accompanied by itemized sworn statements of the expenditures for which they are issued.

## Report of Receipts and Expenses

Sec. 17. At the end of every fiscal year, the Department shall submit a comprehensive and complete report of the receipts and expenses of this Act to the Governor of the State of Texas.

## Expiration of Licenses; Examination on Renewal

Sec. 18. (a) All original operators', commercial operators', chauffeurs', and provisional licenses shall be dated to expire as follows:

1. Operator's License—on the next birthdate of the licensee occurring four (4) years after the date of application;

2. Commercial Operator's and Chauffeur's Licenses—on the next birthdate of the licensee occurring two (2) years after the date of application;

3. Provisional License—on the twenty-first (21st) birthdate of the licensee;

4. Instruction Permit—to expire on next birthdate of holder occurring one (1) year after date of application;

5. Occupational License—one (1) year from date of order of court granting authority to drive.

(b) All renewals of operators', commercial operators', and chauffeurs' licenses shall be dated to expire as follows:

1. Operator's License—four (4) years from expiration date appearing on current license;

2. Commercial Operator's and Chauffeur's Licenses—two (2) years from the date appearing on current license.

(c) The Department may in its discretion require an examination for the renewal of an operator's, commercial operator's or chauffeur's license.

(d) The Department may prescribe the procedure and standards for arranging and conducting examinations for renewal of licenses.

(e) Subject to the provisions of Subsection (d) of this section, any licensee failing to obtain a renewal of license as above set forth may be required to take examination as required in this Act for applicant's original license.

(f) All applicants for renewal may be required by the Department to furnish the information required under Section 6(b) of this Act

## Fees for License

Sec. 19. The fees as provided for in this Act shall be as follows:

1. Operator's License—originals and renewals issued for four (4) years, Seven Dollars (\$7.00);

2. Commercial Operator's License—originals and renewals issued for two (2) years, Ten Dollars (\$10.00);

3. Chauffeur's License—originals and renewals issued for two (2) years, Thirteen Dollars (\$13.00);

4. Provisional and Instruction (Learner's) License—computed on basis of annual prorated cost of type license obtained multiplied by number of full years of validity; provided that a minimum one-year fee of Two Dollars (\$2.00) shall be paid for an instruction permit and by those obtaining such licenses after their twentieth (20th) birthday;

5. Occupational License—Three Dollars (\$3.00) for one (1) year;

6. One Dollar (\$1.00) from each fee collected under this section shall be deposited in a fund to be known as the Department of Public Safety Building Fund and is hereby appropriated for the construction of buildings for that Department.

## Exemption of Disabled Veterans From Fees

Sec. 19A. An honorably discharged veteran of the armed services of the United States who has a sixty percent (60%) service-connected disability, according to the classification of the Veteran's Administration, and who receives compensation from the federal government because of the disability, is exempt from the payment of the fees provided in this Act for the issuance of an Operator's or Chauffeur's Commercial License. The Department of Public Safety shall prescribe reasonable rules and regulations relative to the proof of entitlement to this exemption.

## Notice of Change of Address or Name

Sec. 20. Whenever any person after applying for or receiving an operator's, commercial operator's or chauffeur's license shall move from the address named in such application or in the license issued to him or when the name of the licensee is changed by marriage or otherwise, such person shall within ten (10) days thereafter notify the Department in writing of his old and new addresses or of such former and new names, of the number of any license then held by him, and such person shall apply for a duplicate license as set out in Section 14.

## Records to be Kept by the Department

Sec. 21. (a) The Department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical or numerical order:

(1) All applications denied and on each thereof note the reasons for such denial;

(2) All applications granted; and

(3) The name of every licensee whose driver's license or driving privilege has been cancelled, denied, suspended or revoked and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this State and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licen-

see and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for the renewal of a driver's license and at other suitable times. Before licensing or renewing any license, the Department shall examine the applicant's record for information concerning conviction of traffic violations and involvement in traffic accidents. The Department shall not issue or renew a license when, in its opinion, the applicant's record indicates that issuance or renewal of his license would be inimical to the public safety.

(c) The Department shall not be required to maintain records relating to drivers of motor vehicles after such records are, in the opinion of the Director, no longer necessary, except that records of convictions shall be maintained so long as they may form the basis of cancellations, suspensions, revocations or denials, or with other records of convictions may constitute a person a frequent violator of the traffic law. Records which are not required to be maintained may be destroyed with the approval of the State Auditor and the State Librarian.

(d) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, and most recent address as listed on the records of the Department upon written request and the payment of a One Dollar (\$1.00) fee by a person showing a legitimate need for such information.

(e) The Department is authorized to provide a listing of the sum total of accidents and violations from the licensing records and to itemize therefrom by date and location accidents and violations occurring within the immediate past three (3) year period when requested, upon forms approved by the Department, upon payment of a Two Dollar (\$2.00) fee, provided, however, that if requests for such information be prepared and presented by a single person at any one time in the quantities hereinafter specified and upon data processing request forms acceptable to the Department, such information may be provided upon payment of the following fees for each individual request:

If fifty (50) to two hundred forty-nine (249) at a time, a fee of seventy-five cents (75¢) each; and, if two hundred fifty (250) or more at a time, a fee of fifty cents (50¢) each.

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar (\$3.00) fee by a person showing a legitimate need for such information, provided, however, that if requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department,

such information may be provided upon payment of a One Dollar (\$1.00) fee for each individual request.

(g) No fee shall be charged for information supplied to law enforcement and other governmental agencies for official purposes, provided that bulk information for research projects may be compensated for at regular rates.

(h) All fees and charges required by this Section shall be disposed of as provided in Section 15 of this Article.

(i) Where records are required, the Director may substitute either microfilm or computer records in lieu of hard copies.

#### Medical Advisory Board

Sec. 21A. (a) No member of any Medical Advisory Board serving and advising the Department and all other persons making examinations for or on recommendation of the members of the Board shall be held liable for their opinions and recommendations.

(b) Reports received or made by any such Board, or its members, for the purpose of determining the medical condition of an applicant are for the confidential use of the Board or the Department and as such are privileged information and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under Section 22 and Section 31, and any person conducting an examination pursuant to the request of the Board may be compelled to testify concerning his observations and findings in such proceedings.

(c) The Medical Advisory Board shall be comprised of licensed physicians (including physicians specialty-board-qualified in internal medicine, psychiatry, neurology, physical medicine, and ophthalmology) appointed by the State Health Commissioner from individuals jointly recommended by the Texas State Department of Health and the Texas Medical Society, and optometrists appointed by the State Health Commissioner from individuals jointly recommended by the Texas State Department of Health and the Texas Optometric Association.

Any three (3) members can act on any case or question submitted by the Texas Department of Public Safety.

#### ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

##### Authority of Department to Suspend or Revoke a License

Sec. 22. (a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this section, and upon

charges in writing, a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing. For the purpose of hearing such cases, jurisdiction is vested in the mayor of the city, or judge of the police court, or a Justice of the Peace in the county where the operator or licensee resides. Such officer may receive a fee for hearing such cases if such a fee is approved and set by the County Commissioners Court which has jurisdiction over the residence of the operator or licensee and such fee shall not exceed Five Dollars (\$5.00) per case and shall be paid from the General Revenue Fund of the County. Any fees, not to exceed Five Dollars (\$5.00) per case, which the County Commissioners Court may determine to be owed to such officer for past hearings, or any fees, not to exceed Five Dollars (\$5.00) per case, previously paid such officer for hearing said cases, is hereby authorized. Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Department. Upon such hearing, the issues to be determined are whether the license shall be suspended or whether the license shall be revoked, and, in the event of a suspension, the length of time of the suspension, which shall not exceed one (1) year. The officer who presides at such hearing shall report the finding to the Department which shall have authority to suspend the license for the length of time reported; provided, however, that in the event of such affirmative finding, the licensee may appeal to the county court of the county wherein the hearing was held, said appeal to be tried de novo. Notice by registered mail to the address shown on the license of the licensee shall constitute service for the purpose of this section.

(b) The authority to suspend the license of any operator, commercial operator, or chauffeur as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

1. Has committed an offense for which automatic suspension of license is made upon conviction;
2. Has been responsible as a driver for any accident resulting in death;
3. Is an habitual reckless or negligent driver of a motor vehicle;
4. Is an habitual violator of the traffic law.

The term "habitual violator" as used herein, shall mean any person with four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for

moving violations of the traffic laws of this state or its political subdivisions.

5. Is incapable to drive a motor vehicle;
6. Has permitted an unlawful or fraudulent use of such license;
7. Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;
8. Has failed or refused to submit a report of any accident in which he was involved as provided in Section 39 of this Act;
9. Has been responsible as a driver for any accident resulting in serious personal injury or serious property damage;
10. Is the holder of a provisional license under Section 11A of this Act and has been convicted of two (2) or more moving violations committed within a period of twelve (12) months.

(c) In all appeals prosecuted in any of the courts of this state pursuant to Section 22(a) or Section 31, such trials shall be de novo as that term is used and understood in appeals from Justice of the Peace Courts to County Courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this Section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this Section. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect. Any such licensee as may bring suit to vacate and set aside such ruling and decision shall send a copy thereof, certified to by the clerk of said court, to the Department by registered mail. If any licensee who is a party to such final ruling and decision of the Department fails within thirty (30) days to institute or prosecute a suit to set such suspension aside, then said final ruling and decision of the Department shall be binding upon all parties thereto.

(d) Upon the recommendation of a Juvenile Court with jurisdiction of any provisional license and for a term set by such Juvenile Court, but not to exceed one (1) year, the department shall suspend a provisional license when it is found by such court that a provisional licensee has committed any offense which would be a felony if such licensee was an adult or any misdemeanor (except those offenses covered in Article 802e, Vernon's Texas Penal Code) in which a motor vehicle was used to travel to or from the scene of the offense.

In the event the provisional licensee is an adult at the time he commits any of such offenses described in this Subsection, his license shall be suspended by the department for the time and in the manner described herein upon the recommendation of the court in which he is finally convicted.

It shall be the duty of the judge of any Juvenile Court or other court mentioned herein to report any such recommendation forthwith to the department. Such report shall be made in the manner and form prescribed by the department.

(e) The judge or officer holding a hearing under Subsection (a), (b), or (d) of this section, or the court trying an appeal under Subsection (c) of this section, on determining that the License shall be suspended or revoked, may, when it appears to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, recommend that the revocation or suspension be probated on terms and conditions deemed by the officer or judge to be necessary or proper. The report to the department of the results of the hearing must include the terms and conditions of such probation. When probation is recommended by the judge or officer presiding at a hearing, the department shall probate the suspension or revocation.

(f) When the director believes that a licensee who has been placed on probation under Subsection (e) of this section has violated a term or condition of the probation, the director shall notify the licensee and summons him to appear at a hearing as provided in Subsection (a) or (d) of this section, after notice as provided in Subsection (a) of this section. The issue at the hearing shall be whether a term or condition of the probation has been violated. The officer or judge presiding at the hearing shall report his finding to the department and if the finding is that a term or condition of the probation is violated, the department shall revoke or suspend the license as determined in the original hearing.

Period of Suspension

Sec. 23. The Department shall not suspend a license for a period of more than one (1) year.

Occupational License to Meet Essential Need; Hearing; Restrictions; Financial Responsibility; Violations

Sec. 23A. (a) Any person whose license has been suspended for causes other than physical or mental disability or impairment may file with the judge of the district court having jurisdiction within the county of his residence, a verified petition setting forth in detail an essential need for operating a motor vehicle in the performance of his occupation or trade. The hearing on the petition may be ex parte in nature. The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle in the performance of the occupation or trade of the petitioner or enter an order finding an essential need for operating a motor vehicle in the performance of the occupation or trade of the petitioner. In the event the judge enters the order finding an essential need as set out herein, he shall also, as part of such finding, determine the actual need of the petitioner in operating a motor vehicle in his occupation or trade and shall restrict the use of the motor vehicle to the petitioner's actual occupation or trade and the right to drive to and from the place of employment of the petitioner, and shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Safety Responsibility Law, Article 6701h, Vernon's Annotated Texas Statutes. Such restrictions shall be definite as to hours of the day, days of the week, type of occupation and areas or routes of travel to be permitted, except that in any event the petitioner shall not be allowed to operate a motor vehicle more than ten (10) hours in any twenty-four (24) consecutive hours. Unless further extended at the discretion of the District court, orders entered by such court shall extend for a period of twelve (12) months or less from the date of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department.

(b) Upon receipt of the court order set out in (a) above and after compliance with the provisions of the Texas Safety Responsibility Law, Article 6701h, Vernon's Texas Civil Statutes, the Department shall issue an occupational license, showing on its face the restrictions set out in the order of the court.

(c) Any person who violates the restrictions on his occupational license shall be guilty of a misdemeanor and upon conviction thereof shall be punished in the same manner as one convicted of driving a motor vehicle while license is suspended, and such occupational license shall be automatically cancelled.

Automatic Suspension of License

Sec. 24. (a) The license of any person shall be automatically suspended upon final conviction of any of the following offenses:

1. Negligent homicide resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

3. Any offense punishable as a felony under the motor vehicle laws of this State;

4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision;

5. A conviction upon a charge of aggravated assault upon the person by means of motor vehicle, as provided by law.

(b) The suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months.

(c) The suspension of any license shall be automatically extended upon licensee being convicted of operating a motor vehicle while the license of such person is suspended; such extended period of suspension to be for a like period as the original suspension, and in addition, to any other penalty assessed, as provided in this Act.

#### Rehabilitation Schools

Sec. 24A. (a) The Department shall establish and develop a program of motor vehicle driver education and training for drivers whose licenses have been suspended or revoked or are subject to suspension or revocation.

(b) The Department shall instruct, educate, and inform all persons attending the driver training program in the proper, lawful, and safe operation of a motor vehicle. The Department shall include in the program study of and training in the rules of the road, and the limitations of persons, vehicles, roads, streets, and highways under varying conditions and situations.

(c) The Department may require a person to attend the education and training program as a condition to the reinstatement of a suspended license or the issuance of a new license to a person whose prior license has been revoked.

(d) In the interest of promoting safe driving, the Department may seek the advice and cooperation of the schools, courts, and other interested persons.

#### When Court to Report Convictions

Sec. 25. (a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the operator's, commercial operator's, or chauffeur's license of such person, the court in which such conviction is had shall require the surrender to it of all operators', commercial operators', and chauffeurs' licenses then held by the person so convicted and the clerk of said court shall thereupon forward the same together with a

record of such conviction to the Department, within ten (10) days from the date of conviction.

(b) Every court having jurisdiction over offenses committed under this Act, or any other Acts of this State regulating the operation of motor vehicles on highways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's, commercial operator's, or chauffeur's license of the person so convicted, as provided in Section 22 of this Act.

(c) For the purpose of this Act, the term "conviction" shall mean a final conviction. Also, for the purpose of this Act, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

#### Authority of Department to Cancel License

Sec. 25A. The Department is hereby authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that said licensee failed to give the required or correct information in his application.

#### Surrender and Return of License

Sec. 26. The Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

#### No Operation Under Foreign License During Suspension or Revocation in This State

Sec. 27. No person, resident or nonresident, whose operator's, commercial operator's, or chauffeur's license or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Act shall operate a motor vehicle in this State under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this Act.

#### Suspending Resident's License Based Upon Conduct in Another State

Sec. 28. (a) The Department is authorized to suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of a driver.

(b) The Department may give such effect to conduct of a resident in another state as is provided by the laws of this State had such conduct occurred in this State.

Suspending Privileges of Nonresidents and Reporting  
Convictions

Sec. 29. (a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Department in like manner and for like cause as an operator's, commercial operator's, or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Department is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State wherein the person so convicted is a resident.

Cancellation of License Because of Mental Incompetence

Sec. 30. It shall be unlawful for any person to act as an operator, commercial operator, or chauffeur who is an habitual drunkard or is addicted to the use of narcotic drugs, or who is an epileptic, or who has been adjudged insane or an idiot, imbecile, or feeble-minded, and who has not been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent, and any finding by any court of competent jurisdiction that any person holding an operator's license, commercial operator's license, or chauffeur's license who is either insane, feeble-minded, an habitual drunkard, an epileptic, an imbecile, an idiot, or addicted to the use of narcotics, shall carry with it a revocation of such operator's, commercial operator's, or chauffeur's license, and it shall be the duty of the clerk of any court in which such findings are made, to certify same to the Department within ten (10) days.

Revoking Licenses of Needy Blind

Sec. 30A. (a) Once each month the Department of Public Welfare shall furnish the Department of Public Safety a list of those persons who apply for or receive assistance to the needy blind. The list is privileged information and may be used only by the Department of Public Safety.

(b) The Department of Public Safety shall revoke the license of every person whose name appears on the list referred to in Subsection (a).

Right of Appeal to Courts

Sec. 31. Any person denied a license or whose license has been cancelled or revoked by the Department except where such cancellation or revocation is automatic under the provisions of this Act shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the County Court at Law in the county wherein such person shall reside, or if there be no County Court at Law therein, then in the county court of said county, and such court is hereby vested with jurisdiction, and it shall be its duty to set the mat-

ter for hearing upon ten (10) days written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Act.

Provided the trial on appeal as herein provided for shall be a trial de novo and the licensee shall have the right of trial by jury and his license shall not be suspended pending the appeal.

Provided further in cases herein provided for suspension of license, the filing of the petition of appeal shall abate said suspension until the trial herein provided for shall have been consummated and final judgment thereon is had.

Violation of License Provision

Sec. 32. It shall be unlawful for any person to commit any of the following acts:

1. To display or cause or permit to be displayed or to have in possession any operator's, commercial operator's, or chauffeur's license knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;

2. To lend or knowingly permit the use of, by one not entitled thereto, any operator's, commercial operator's, or chauffeur's license issued to the person so lending or permitting the use thereof;

3. To display or to represent as one's own, any operator's, commercial operator's, or chauffeur's license not issued to the person so displaying same;

4. To fail or refuse to surrender to the Department on demand any operator's, commercial operator's, or chauffeur's license which has been suspended, cancelled, or revoked as provided by law;

5. To apply for or have in one's possession more than one operator's, commercial operator's, or chauffeur's license that is currently valid;

6. To use a false or fictitious name or give a false or fictitious address in any application for an operator's, commercial operator's, or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to cancel<sup>1</sup> a material fact or otherwise commit a fraud in any such application.

<sup>1</sup> So in enrolled bill. Probably should read "conceal."

Making False Affidavit False Swearing

Sec. 33. Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this Act to be sworn to or affirmed, is guilty of false swearing and upon conviction shall be punishable by fine or imprisonment as other persons committing false swearing are punishable.

## Driving While License Suspended or Revoked

Sec. 34. Any person whose operator's, commercial operator's, or chauffeur's license or driving privilege as a nonresident has been cancelled, suspended, or revoked as provided in this Act, and who drives any motor vehicle upon the highways of this State while such license or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), and, in addition, there shall be imposed a sentence of imprisonment of not less than seventy-two (72) hours nor more than six (6) months.

## Permitting Unauthorized Minor to Drive

Sec. 35. No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this Act.

## Permitting Unauthorized Person to Drive

Sec. 36. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this Act.

## Employing Unlicensed Chauffeur or Commercial Operator

Sec. 37. No person shall employ as a chauffeur or commercial operator of a motor vehicle any person not then licensed as provided in this Act.

## Renting Motor Vehicle to Another

Sec. 38. (a) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the State of his residence except a nonresident whose home State does not require that an operator be licensed.

(b) No person shall rent a motor vehicle to another until he has inspected the operator's, commercial operator's, or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(c) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the Department.

## ARTICLE V—ACCIDENT REPORTS

Secs. 39 to 42. Repealed by Acts 1969, 61st Leg., p. 1189, ch. 383, § 2, eff. May 29, 1969.

## Department to Tabulate Accident Reports

Sec. 43. The Department shall receive accident reports required to be made by law and shall tabulate and analyze such reports and publish annually or at more frequent intervals, statistical information based thereon as to the number, cause, and location of highway accidents; and the Department shall biennially report to the Governor and the Legislature the abstract of such reports for the preceding biennium, with its conclusions and findings and recommendations for decreasing highway accidents and increasing safety upon the highways of Texas.

## ARTICLE VI—PENALTIES AND GENERAL PROVISIONS

## Penalty for Violation of Act

Sec. 44. (a) It shall be a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other laws of this State declared to be a felony.

(b) In addition to any other penalties hereinbefore provided, and unless another penalty is in this Act or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Act shall be punished by fine of not more than Two Hundred Dollars (\$200).

## Forging or Counterfeiting Drivers' Licenses and Other Instruments

Sec. 44A. (a) Any person who shall print, engrave, copy, photograph, make, issue, sell, or circulate, or who shall possess or have in his possession with intent to use, sell, circulate, or who shall possess or have in his possession with intent to use, sell, circulate, or pass, any forged or counterfeit driver's license, driver's license form, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument which has not been printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of a person, board, agency, or authority authorized to do so by the provisions of this Act, or by the laws of another state or of the United States, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) years nor more than five (5) years.

(b) Any person who has in his possession any stamp, dye, plate, negative, device, machine, or other instrument, or parts thereof used or designed for use for forging or counterfeiting any instruments set out in Subsection (a) above, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) nor more than five (5) years.

(c) Any court, officer, or tribunal, having jurisdiction of any offense defined in this Section, or any District or County Attorney, may

subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this Section. Any person so summoned and examined shall not be liable to prosecution for the violation of any provision of this Section about which he may testify when so summoned or subpoenaed.

#### Repeal of Conflicting Laws

Sec. 45. All laws or parts of laws in conflict herewith are hereby expressly repealed, and more particularly Senate Bill No. 15, Chapter 466, Page 1785, General Laws, Second Called Session, Forty-fourth Legislature, as amended by House Bill No. 16, Chapter 369, Page 752, Regular Session, Forty-fifth Legislature.<sup>1</sup>

<sup>1</sup> Article 6687a.

#### Constitutionality

Sec. 46. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act and the Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

[Acts 1941, 47th Leg., p. 245, ch. 173; Acts 1943, 48th Leg., p. 469, ch. 313, § 1; Acts 1945, 49th Leg., p. 59, ch. 41, §§ 1 to 3; Acts 1947, 50th Leg., p. 171, ch. 108, § 1; Acts 1951, 52nd Leg., p. 209, c. 124, §§ 1, 2; Acts 1951, 52nd Leg., p. 251, ch. 147, § 1; Acts 1953, 53rd Leg., p. 676, ch. 257, § 1; Acts 1953, 53rd Leg., p. 751, ch. 299, § 1; Acts 1953, 53rd Leg., p. 843, ch. 341, § 1; Acts 1955, 54th Leg., p. 388, ch. 108, §§ 1, 2; Acts 1957, 55th Leg., p. 527, ch. 244, § 1; Acts 1957, 55th Leg., p. 670, ch. 282, § 1; Acts 1957, 55th Leg., 2nd C.S. p. 781, ch. 21, § 3; Acts 1959, 56th Leg., p. 1, ch. 1, § 2(a); Acts 1959, 56th Leg., p. 674, ch. 311, § 1; Acts 1959, 56th Leg., 2nd C.S. p. 161, ch. 41, § 1; Acts 1961, 57th Leg., 1st C.S. p. 101, ch. 24, art. IV, §§ 1, 2, eff. Sept. 1, 1961; Acts 1965, 59th Leg., p. 752, ch. 350, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 1663, ch. 717, §§ 1 to 3, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 777, ch. 327, § 8, eff. May 30, 1967; Acts 1967, 60th Leg., p. 778, ch. 328, §§ 1 to 18, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 891, ch. 386, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 262, ch. 101, § 1, eff. April 28, 1969; Acts 1969, 61st Leg., p. 1189, ch. 383, § 2, eff. May 29, 1969; Acts 1969, 61st Leg., p. 1821, ch. 612, §§ 1, 2, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1824, ch. 614, § 1, eff. June 11, 1969; Acts 1969, 61st Leg., p. 1946, ch. 649, § 1, eff. June 12, 1969; Acts 1969, 61st Leg., p. 2358, ch. 798, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 987, ch. 175, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1181, ch. 282, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1399, ch. 379, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1727, ch. 499, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1934, ch. 586, §§ 1 to 11, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2496, ch. 819, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2916, ch. 966, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 18, ch. 15, § 1, eff. March 22, 1973; Acts 1973, 63rd Leg., p. 524, ch. 226, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 780, ch. 346, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 795, ch. 356, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 1291, ch. 481, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1677, ch. 607, §§ 6, 7, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1780, ch. 654, § 1, eff. Aug. 27, 1973.]

#### Art. 6687b-1. Expired

This article authorized persons who were 17 years of age or over to drive school buses and common carrier motor vehicles during the pendency of World War II.

#### Art. 6687-1. Certificate of Title Act

Short Title; Legislative Intent; Construction of  
"Motor Vehicle"

Sec. 1. This Act shall be referred to, cited and known as the "Certificate of Title Act," and in the enactment hereof it is hereby declared to be the legislative intent and public policy of this state to lessen and prevent the theft of motor vehicles, house trailers, also trailers and semi-trailers having a gross weight in excess of four thousand (4,000) pounds, and the importation into this state of, and traffic in, stolen motor vehicles, house trailers, trailers and semi-trailers as defined herein, and the sale of encumbered motor vehicles, house trailers, also trailers and semi-trailers as defined herein, without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle, house trailer, also trailers and semi-trailers as defined herein, stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end. The terms hereinafter set out, as herein defined shall control in the enforcement and construction of this Act, and it is further provided that wherever the term "Motor Vehicle" appears in this Act, it shall be construed to include "house trailer," also "trailers" and "semi-trailers" having a gross weight in excess of four thousand (4,000) pounds; provided, however, that nothing in this Act shall apply to trailers or semi-trailers used solely for the transportation of farm products, if such products are not transported for hire.

#### Accessories, Inapplicable to

Sec. 1a. The provisions of House Bill No. 407, Chapter 4, Acts of the Forty-sixth Legislature, Regular Session, and as by this Act amended, shall not apply to the filing or recording of a lien or liens which are created only upon tires, radios, heaters, or other automobile accessories.

#### "Motor Vehicle" Defined

Sec. 2. The term "motor vehicle" means every kind of motor driven or propelled vehicle now or hereafter required to be registered or licensed under the laws of this state and shall also include trailers, house trailers, and semi-trailers. "Motor vehicle" does not include a motor-assisted bicycle as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).<sup>1</sup>

<sup>1</sup> See article 6701d, § 2(n).

#### "House Trailer" Defined

Sec. 2a. The term "House Trailer" means a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle.

#### "Trailer" Defined

Sec. 2b. The term "trailer" means every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds designed or

used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

**"Semi-Trailer" Defined**

Sec. 2c. The term "semi-trailer" means vehicles of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

**"Lien" Defined**

Sec. 3. The term "Lien" means a security interest, as defined in Section 1.201(37), Business and Commerce Code, created by every kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other written security agreement, as defined in Section 9.105(a)(8), Business and Commerce Code, of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle, and means any lien created or given by constitution or statute in a motor vehicle.

**"Owner" Defined**

Sec. 4. The term "Owner" includes any person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined, except the Federal Government and any of its agencies, and the State of Texas and any governmental subdivision or agency thereof not required by law to register or license motor vehicles owned or used thereby in this State.

**"Mortgagee" Defined**

Sec. 5. The term "Mortgagee" means a secured party, as defined in Section 9.105(a)(9), Business and Commerce Code, and any other person, firm, association or corporation holding a lien on a motor vehicle.

**"Mortgagor" Defined**

Sec. 6. The term "Mortgagor" means a debtor, as defined in Section 9.105(a)(4), Business and Commerce Code, and any other person, firm, association or corporation giving a lien on a motor vehicle or agreeing that a lien may be retained thereon or any part thereof or as against whom a lien arises under the constitution or a statute.

**"First Sale" Defined**

Sec. 7. The term "First Sale" means the bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in this State or elsewhere; and such a bargain, sale, transfer or delivery, accompanied by registration or licensing of said vehicle in this State or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.

**"Subsequent Sale" Defined**

Sec. 8. The term "Subsequent Sale" means the bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed within this State or elsewhere, save and except when such vehicle is not required under law to be registered or licensed in this State; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where such bargain, sale, transfer, or delivery occurred.

**"New Car" Defined**

Sec. 9. The term "New Car" means a motor vehicle which has never been the subject of a first sale either within this State or elsewhere.

**"Used Car" Defined**

Sec. 10. The term "Used Car" means a motor vehicle that has been the subject of a first sale whether within this State or elsewhere.

**"Person" Defined**

Sec. 11. The term "Person" includes individuals, firms, associations, and corporations required by law to register motor vehicles owned or used thereby, including officers, employees, or agents acting for the State of Texas or any Governmental subdivision or agency thereof, but shall not include the Federal Government or any of its agencies not required by law to register motor vehicles owned or used thereby.

**"Hereafter" Defined**

Sec. 12. The term "Hereafter" means after the effective date of this Act.

**"Receipt" Defined**

Sec. 13. The term "Receipt" means the written acknowledgment by a designated agent of the Department of having received an application for a certificate of title and the required fee, on such form as may be prescribed by the Department from time to time.

**"Stolen" and "Converted" Defined**

Sec. 14. The terms "Stolen" and "Converted" mean the same as defined in the Penal Code.

**"Concealed Motor Vehicle" Defined**

Sec. 15. The term "Concealed Motor Vehicle" means a motor vehicle that is concealed, as defined in Article 1557 of the Penal Code as amended by Acts of 1929, Forty-first Legislature, Page 237, Chapter 102, Section 1.<sup>1</sup>

<sup>1</sup> Repealed; see, now, Penal Code, § 32.33.

**"Manufacturer" Defined**

Sec. 16. The term "Manufacturer" means any person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within or without this State.

**"Importer" Defined**

Sec. 17. The term "Importer" means any person, except a manufacturer, who brings any used motor vehicle into this State for the purpose of sale within this State.

**"Distributor" Defined**

Sec. 18. The term "Distributor" means any person engaged in the business of selling to a dealer motor vehicles theretofore bought from a manufacturer.

**"Dealer" Defined**

Sec. 19. The term "Dealer" means any person purchasing motor vehicles for resale at retail to owners.

**"Motor Number" or "Serial Number" Defined**

Sec. 20. The terms "motor number" or "serial number" means the manufacturer's permanent vehicle identification number or derivative number thereof affixed to or imprinted upon the engine or motor, transmission, body, frame, chassis or other part of a motor vehicle or the number assigned by the Texas Highway Department, affixed to or imprinted upon the engine or motor, transmission, body, frame, chassis or other part of a motor vehicle.

**"Manufacturer's Permanent Vehicle Identification Number" Defined**

Sec. 21. The term "manufacturer's permanent vehicle identification number" means the number affixed by the manufacturer to a motor vehicle in a manner and place easily accessible for physical examination and die-stamped or otherwise permanently affixed on various removable parts of the vehicle.

**"Manufacturer's Certificate" Defined**

Sec. 22. The term "Manufacturer's Certificate" means a certificate on form to be prescribed by the Department showing original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title must show thereon, on appropriate forms to be prescribed by the Department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer to owner.

**"Importer's Certificate" Defined**

Sec. 23. The term "Importer's Certificate" means the certificate on form to be prescribed by the Department for each used motor vehicle brought into this State for the purpose of sale within this State, and such importer's certificate must be accompanied by such evidence of title to the motor vehicle as the Department may, from time to time, require in order to show a good title and the names and addresses of all mortgagees.

**"Certificate of Title" Defined**

Sec. 24. The term "Certificate of Title" means a written instrument which may be issued solely by and under the authority of the department, and which must give the following

data together with such other data as the department may require from time to time:

(a) The name and address of the purchaser and seller at first sale or transferee and transferer at any subsequent sale.

(b) The make.

(c) The body type.

(d) The motor number.

At such time as the stamping of permanent identification numbers on motor vehicles in a manner and place easily accessible for physical examination is universally adopted by motor vehicle manufacturers as the permanent vehicle identification, the department is authorized to use such permanent identification number as the major identification of motor vehicles subsequently manufactured. The motor number will continue to be the major identification of vehicles manufactured before such change is adopted.

(e) The serial number.

(f) The license number of the current Texas plates.

(g) The names and addresses and dates of any liens on the motor vehicle, in chronological order of recordation.

(h) If no liens are registered on the motor vehicle, a statement of such fact.

(i) A space for the signature of the owner and the owner shall write his name with pen and ink in such space upon receipt of the certificate.

(j) A statement indicating "rights of survivorship" when an agreement providing that the motor vehicle is to be held between a husband and his wife jointly with the interest of either spouse who dies to survive to the surviving spouse is surrendered with the application for certificate of title. This agreement is valid only if signed by both husband and wife and, if signed, the certificate shall be issued in the name of both.

**Certificate of Title Section Transferred to Highway Department**

Sec. 24a. The certificate of title section, and its personnel, property, equipment, and records, now a part of the Department of Public Safety of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Highway Department of the State of Texas.

**"Department" Defined**

Sec. 25. The term "department" means the State Highway Department of the State of Texas.

**"Designated Agent" Defined**

Sec. 26. The term "Designated Agent" means each County Tax Collector in this State who may perform his duties under this Act through any regular deputy.

**Application for Certificate of Title Before Sale**

Sec. 27. Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer's metal or cardboard license number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile upon form to be prescribed by the Department for a certificate of title for such motor vehicle.

**Manufacturer's Certificate**

Sec. 28. No designated agent shall issue a receipt for an application for certificate of title to any new motor vehicle the subject matter of the first sale unless the applicant shall deliver to such agent a manufacturer's certificate properly assigned by the manufacturer, distributor, or dealer shown thereon to be the last transferee to the applicant, upon form to be prescribed by the Department.

**Importer's Certificate**

Sec. 29. No such designated agent shall issue a receipt for a certificate of title to any used motor vehicle imported into this State for the purpose of sale within this State without delivery to him by the applicant of an importer's certificate properly assigned by the importer upon form to be prescribed by the Department.

**Vehicles Brought Into State; Examination; Sale of Vehicles; Liens or Encumbrances**

Sec. 30. (a) Before any motor vehicle which was last registered and titled, or registered in some other state or country may be registered and titled in Texas, the applicant shall furnish to the designated agent a certificate from a duly constituted peace officer in the form prescribed by the Department, certifying that such officer has made a physical examination of the motor number and serial number, or the permanent identification number of the motor vehicle. The said peace officer will certify that he has made a physical examination of the motor number and serial number, or permanent identification number, and note the correct numbers on said form. No designated agent shall accept any application for registration and a certificate of title until the provisions of this Section have been complied with; and further, no designated agent shall accept an application for registration and a certificate of title if the said numbers on the peace officer's certification do not agree with the motor number and serial number, or permanent identification number, shown on the evidence of ownership papers presented by the applicant for registration and a certificate of title. The certificate of examination of the said motor and serial numbers, or permanent identification numbers, issued by the duly constituted peace officer shall become a part of the evidence of ownership to accompany the owner's application for a certificate of title and the Department may not issue a certificate of title

unless and until these provisions have been complied with.

(b) Before any motor vehicle brought into this State by any person, other than a manufacturer or importer, and which is required to be registered or licensed within this State, can be bargained, sold, transferred, or delivered with intent to pass any interest therein or encumber by any lien, application on form to be prescribed by the Department must be made to the designated agent of the county wherein the transaction is to take place for a certificate of title, and no such designated agent shall issue a receipt until and unless the applicant shall deliver to him such evidence of title as shall satisfy the designated agent that the applicant is the owner of such motor vehicle, and that the same is free of liens except such as may be disclosed on an affidavit in form to be prescribed by the Department.

No designated agent of the department shall be liable for civil damages arising out of his failure to reflect liens or encumbrances on such motor vehicle unless such failure constitutes willful or wanton negligence.

**Receipts Issued by Designated Agents**

Sec. 31. Every designated agent in this State receiving an application for certificate of title shall, when the provisions hereof have been complied with, issue a receipt marked "Original" to the applicant and shall note thereon the required information concerning the motor vehicle and the existence or nonexistence of liens as disclosed in the application and deliver such receipt upon payment of the required fees to the applicant; provided however, that in the event there is a lien disclosed in the application, the said receipt shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed or delivered by every such designated agent to the first lien holder as disclosed in said application; the other said copy shall be marked "Duplicate Original" and shall be mailed or delivered to the address of the applicant as disclosed in the said application, and such receipt pending the issuance of the certificate of title shall authorize the operation of such motor vehicle on the highways and public places within this State for a period of not to exceed ten (10) days and upon the expiration of such period of time shall cease to be effective for any purpose, but may be renewed under such reasonable rules and regulations as may be promulgated by the Department.

**Issuance of Certificate of Title**

Sec. 32. Every designated agent within this State shall, on the same day issued by him, forward to the Department, by mail prepaid postage, copies of all receipts issued by him together with such evidences of title as may have been delivered to him by the several applicants, and the Department within five (5) days after receiving such application, if upon inspection thereof it is satisfactorily shown that the certificate of title should issue, shall issue certifi-

cate of title marked "Original" on the face thereof and send the same to the address of the applicant as given in his application by first class mail; provided however, that in the event there is a lien disclosed in the application the said certificate of title shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed to the address of the first lien holder as disclosed in said certificate of title by first class mail; the copy of said certificate of title shall be marked "Duplicate Original" and shall be sent by first class mail to the address of the applicant as given in his application.

#### Duplicate Original

Sec. 32a. The receipt or certificate of title marked "Duplicate Original" shall be used only as evidence of title of said motor vehicle and shall not be used by any person in transferring any interest in said motor vehicle or to establish any lien thereon.

#### Sale; Transfer of Certificate; Affidavit

Sec. 33. No motor vehicle may be disposed of at a subsequent sale unless the owner designated in the certificate of title transfers the certificate of title on a form prescribed by the Department before a Notary Public. This form shall include, among such other matters as the Department may determine, an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens on the motor vehicle, except such as are shown on the certificate of title or are fully described in the affidavit. No title to any motor vehicle shall pass or vest until the transfer is so executed.

#### New Certificate of Title When all Forms Have Been Used

Sec. 34. When all of the forms of transfer on any certificate of title have been used by reason of subsequent sales, such certificate of title may be delivered to any designated agent within this State, and a receipt taken therefor as provided in the case of first sale, and such agent shall forward the same to the Department on the same day received by him, and new certificate of title shall be issued by the Department.

#### Transfer by Operation of Law; New Certificate

Sec. 35. When the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon inheritance, devise or bequest, bankruptcy, receivership, judicial sale, or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with a certified copy of the order appointing a temporary administrator or of the probate proceedings, or letters testamentary or of administration, if any (if no administration is necessary, then upon affidavit showing such fact and all of the heirs at law and specification by the heirs as to in whose name the certificate shall issue), or order, or bill of sale from the officer making the judicial sale. If the security interest or other lien is foreclosed in accordance with law by nonjudicial means,

the affidavit of the secured party or other mortgagee of the fact of the nonjudicial foreclosure in accordance with law is sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien, the affidavit of the mortgagee of the fact of the creation of the lien and of the divestiture of title by reason thereof in accordance with law is sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife, upon the death of either spouse the Department shall issue a new certificate of title to the surviving spouse upon being provided with a copy of the death certificate of the deceased spouse.

#### Loss or Destruction of Certificate; Certified Copy

Sec. 36. Should a certificate of title, "Duplicate Original" or "Original," be lost or destroyed, the owner or lien holder thereof may procure a certified copy of same directly from the Department by making affidavit upon such form as may be prescribed by the Department from time to time, accompanied by a fee of Twenty-five (25) Cents, which shall be deposited in the State Highway Fund and be expended as provided by Section 57 of this Act, provided however, that the certified copy of the certificate of title marked "Original" shall issue only to the first lien holder where a lien is disclosed thereon. Said certified copy and all subsequent certificates of title issued, until transfer of ownership of said motor vehicle, shall be plainly marked across their faces "Certified Copy," and all subsequent purchasers or lien holders of said motor vehicle shall acquire only such rights, title, or interest in such motor vehicles as the holder of the said certified copy had, provided however, that upon the transfer of title to said motor vehicle, the words "Certified Copy" shall be eliminated from the new certificate of title. Any purchasers or lien holders of such motor vehicle may at the time of such purchase or at the time lien is established require the seller or owner to indemnify him and all subsequent purchasers of said motor vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the said original certificate of title. In the event of recovery of the said certificate of title, "Duplicate Original" or "Original" thereof, the said owner shall forthwith surrender the same to the Department for cancellation and the words "Certified Copy" shall be eliminated from said certificates thereafter issued by the Department.

#### Junking Motor Vehicle; Rebuilding or Assembling Motor Vehicle

Sec. 37. (a) When any motor vehicle registered or licensed in Texas to which a certificate of title has been issued is junked, dismantled, destroyed, or its motor number changed or the motor vehicle changed in such manner that

it loses its character as a motor vehicle, or in such manner that it is not the motor vehicle described in such certificate of title, the owner named last in the certificate of title shall surrender the certificate of title to the Department together with the written consent of the holders of all unreleased liens noted thereon, and the certificate shall be cancelled on the records of the Department. Provided that nothing herein shall affect the sale of used parts for automobiles when sold as such.

(b) Any person rebuilding or assembling a motor vehicle, shall, before using same or operating same, or permitting the operation of same, or disposing of same, procure a certificate of title for same from the Department. For the purpose of obtaining any such certificate of title said person shall furnish an affidavit setting forth where, when, and how, and from whom he procured the various respective parts used in the rebuilding or assembling of such motor vehicle for which certificate of title is sought; provided, however, that the Department shall not issue such certificate of title unless and until it has satisfied itself that the facts set forth are true and correct, and that the person making the affidavit is in fact the person purported in such affidavit to be the maker thereof.

#### Grounds for Refusing or Revoking Certificate

Sec. 38. The Department shall refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the same, upon any of the following grounds:

(a) That the application contains any false or fraudulent statement, or that the applicant has failed to furnish required information requested by the Department, or that the applicant is not entitled to the issuance of a certificate of title under this Act.

(b) That the Department has reasonable ground to believe that the vehicle is a stolen or converted vehicle as herein defined, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee.

(c) That the registration of the vehicle stands suspended or revoked.

(d) That the required fee has not been paid.

#### Hearing After Refusal or Revocation; Appeal

Sec. 39. Any person interested in a motor vehicle to which the Department has refused to issue a certificate of title or has suspended or revoked the certificate of title, feeling aggrieved, may apply to the designated agent of the county of such interested person's domicile for a hearing, whereupon such designated agent shall, on the same day such application for hearing is received by him, notify the Department of the date of the hearing, which shall not be less than ten (10) days nor more than fifteen (15) days, and at such hearing such applicant and the Department may submit

evidence, and a ruling of the designated agent shall bind both parties as to whether or not the Department has acted justly in the premises.

(a) Such applicant feeling aggrieved with the ruling of the designated agent, may, within five (5) days and not thereafter, appeal to the County Court of the county of the applicant's residence, who shall proceed to try the issues as in other civil cases, and all rights and immunities granted in the trial of civil cases shall be available to the interested parties.

(b) If the action of the Department complained of is sustained, a certificate of title for the particular motor vehicle involved shall only be issued upon such reasonable rules and regulations as the Department may prescribe.

(c) Should the final decision be against the ruling of the Department, the certificate of title shall issue forthwith.

#### Authority to Execute Application or Transfer

Sec. 40. No person shall, without lawful authority, execute any application or transfer any certificate of title or receipt for any person other than himself, except that firms, associations, and corporations may act through authorized agents.

#### Security Interest; Perfection

Sec. 41. Except for a security interest in motor vehicles held by the debtor or other mortgagor as inventory, a security interest or other lien in a motor vehicle that is the subject of a first or subsequent sale may be perfected only by notation of the lien on the certificate of title in accordance with this Act. A security interest or other lien in a motor vehicle held by a debtor or other mortgagor as inventory may be perfected only by complying with Chapter 9 of the Business and Commerce Code.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 9.101 et seq.

#### Notation of Security Interest; Filing

Sec. 42. Presentation of an application for a certificate of title with the lien disclosed therein and tender of the filing fee to the designated agent of the Department or acceptance of the application by the designated agent of the Department constitutes notation of the lien under this Act. The time of the notation of a lien under this Act is deemed to be the time of filing of the security interest for purposes of Chapter 9 of the Business and Commerce Code.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 9.101 et seq.

Secs. 43 to 46. Repealed by Acts 1971, 62nd Leg., p. 896, ch. 123, § 7, eff. May 10, 1971.

#### Discharge of Lien

Sec. 47. When a lien is discharged, the holder thereof shall, on demand of the owner, execute and acknowledge before a Notary Public the discharge of the lien upon such form as may be prescribed by the Department, and upon presentation of such evidence, the owner

may present the certificate of title to the designated agent in the county together with application for title as prescribed in this Act and shall receive from the Department a new title.

**Cancellation of Discharged Lien**

Sec. 47a. The Department is hereby authorized to cancel any discharged lien which has been properly recorded on a Certificate of Title provided the record mortgages,<sup>1</sup> whether such mortgages<sup>1</sup> be an individual, firm, corporation, bank, estate, or any Governmental loaning agency, is nonexistent, or cannot be located to enable the registered owner to obtain a release of such discharged lien, provided such properly recorded lien may not be cancelled unless and until such recorded lien has been of record for six (6) years or more.

<sup>1</sup> Probably should read "mortgagee."

**Duplicate Receipt or Certificate**

Sec. 48. No duplicate receipt or certificate of title shall be issued without the surrender of the original, except upon such reasonable rules and regulations as may be promulgated by the Department.

**Altering, Forging or Counterfeiting Certificates; Altering or Removing Motor, Vehicle or Trailer Numbers; Possession or Sale of Vehicles With Numbers so Altered; Prosecutions; Penalties; Seizure and Disposition of Vehicles; Assigned Vehicle Identification Numbers**

Sec. 49. (a) Any person who shall alter any certificate of title issued by the Department, or forge or counterfeit any certificate of title purporting to have been issued by the Department under the provisions of this Act, or who shall alter or falsify or forge any assignment thereof, shall be guilty of forgery and upon conviction thereof shall be punished as provided by law.

(b) It shall be unlawful for any person to alter, change, erase, or mutilate, for the purpose of changing the identity, any motor number, serial number, manufacturer's permanent vehicle identification number or derivative number thereof placed on the vehicle, or any part thereof by the manufacturer, or any motor number or serial number assigned by the State Highway Department and placed or caused to be placed on a vehicle as provided by law for the purpose of identification. It shall also be unlawful for any person other than a vehicle manufacturer to stamp or place any motor number or manufacturer's vehicle identification number other than a number assigned by the State Highway Department as provided by law, on any vehicle or any part thereof. Any person violating the provisions of this section commits a misdemeanor punishable by a fine not to exceed \$1,000, by confinement in jail for not more than 2 years or by both.

(c) (1) A person who possesses, sells or offers for sale a motor vehicle or any part of a motor vehicle that has had the serial number, the motor number, or the manufacturer's permanent identification number removed,

changed, or obliterated when he knows the number has been removed, changed or obliterated commits a misdemeanor punishable by a fine not to exceed \$1,000, by confinement in jail for not more than 2 years, or by both.

(2) It is a defense to prosecution under this subsection, which shall not be submitted to the jury unless evidence is admitted supporting it but which, if raised, must be negated beyond a reasonable doubt, that the person is the rightful or true owner of the motor vehicle or part of a motor vehicle that is the subject of the prosecution.

(3) For purposes of this subsection, a person knows the serial number, the motor number, or the manufacturer's permanent vehicle identification number or derivative number thereof has been removed, changed or obliterated on a motor vehicle or a part of a motor vehicle in his possession if he is aware of but consciously disregards a substantial and unjustifiable risk that the number has been removed, changed, or obliterated. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the defendant's standpoint.

(d) (1) If a person is arrested for possession of a motor vehicle or part of a motor vehicle in violation of this section, the arresting officer will take the motor vehicle or part of a motor vehicle into his possession.

(2) If the seizure under Subsection (d)(1) is not made pursuant to a search warrant, the arresting officer shall prepare and deliver to a magistrate a written inventory of each motor vehicle or part of a motor vehicle seized.

(3) If the person arrested is charged with an offense under this section, the magistrate may order that any motor vehicle or part of a motor vehicle seized by the arresting officer be delivered to the law enforcement agency that seized it pending disposition of the charges.

(4) If there is no prosecution or conviction for an offense involving the motor vehicle or part of a motor vehicle seized, the magistrate to whom the seizure was reported shall notify in writing the rightful owner, if known, that he is entitled to the motor vehicle or part of a motor vehicle upon request to the law enforcement agency holding it.

(5) Upon conviction of any person for a violation of this section, the court shall order that any motor vehicle or part of a motor vehicle seized and impounded in connection with the offense be delivered to the rightful owner or true owner, if known.

(6) If the rightful owner of a vehicle or part of a motor vehicle seized under this section is unknown and cannot be determined the court shall, after final disposition of the charges, order it forfeited to the state.

(7) Any person interested in any motor vehicle or part of a motor vehicle seized under this

section may, at any time, petition the magistrate to whom the seizure was reported to deliver possession of it to him. The magistrate, after notice to the law enforcement agency in possession of it, shall conduct a hearing to determine the petitioner's right to possession of the motor vehicle or part of a motor vehicle. If the petitioner proves by a preponderance of the evidence that he has a right to possession, the magistrate shall order it delivered to him.

(e) If no serial number is die stamped upon a house trailer, also trailer or semi-trailer having a gross weight in excess of four thousand (4,000) pounds, by the manufacturer of such house trailer, trailer or semi-trailer, or if the serial number so assigned and die stamped by the manufacturer has been removed or obliterated, the Department shall, upon proper application, assign a serial number for such house trailer, trailer or semi-trailer, and this assigned serial number shall be die stamped by the applicant at the place designated by the Department upon such house trailer, trailer or semi-trailer for which such serial number is assigned. The manufacturer's serial number or the serial number assigned by the Department shall be placed on the carriage or axle part of the house trailer, trailer or semi-trailer and shall be used as the major identification of the house trailer, trailer or semi-trailer in the issuance of a Certificate of Title thereon.

(f) Any person who has been determined to be the rightful owner of any motor vehicle or part of a motor vehicle that has had the serial number, the motor number or the manufacturer's permanent vehicle identification number or derivative thereof removed, changed or obliterated shall within 30 days of such determination make application to the Texas Highway Department for an assigned vehicle identification number, and the number assigned by the Texas Highway Department shall be die-stamped or otherwise affixed to the motor vehicle or part thereof at the location and in the manner designated by the Texas Highway Department. Each application for an assigned vehicle identification number shall be submitted on a form prescribed and furnished by the Texas Highway Department and shall be accompanied by the outstanding negotiable certificate of title covering the vehicle. In the event no certificate of title is outstanding on the vehicle, the application shall be accompanied by such other valid evidence of ownership as may be required by the Texas Highway Department. A fee of One Dollar (\$1) shall accompany each such application for assigned vehicle identification number and shall be deposited in the State Highway Fund. Anyone failing to comply with the provisions of this subsection shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$200.

**Stolen, Converted or Concealed Motor Vehicle**

Sec. 50. Whenever any motor vehicle registered or licensed in this State is reported to

the Department as having been stolen, converted, or concealed, it shall be the duty of the Department, to make a distinctive record thereof and to note the fact on its records of the certificate of title and when any such motor vehicle so reported as stolen, converted, or concealed, has been recovered or found, it shall be the duty of the party making the report to the Department to likewise forthwith notify the Department of the fact so that the Department's records may be changed accordingly.

**Offering for Sale or as Security Without Receipt or Certificate Forbidden**

Sec. 51. It shall hereafter be unlawful for any person, either by himself or through any agent, to offer for sale or to sell or to offer as security for any obligation any motor vehicle registered or licensed in this State without then and there having in his possession the proper receipt or certificate of title covering the motor vehicle so offered.

Sec. 52. Repealed by Acts 1967, 60th Leg., p. 1035, ch. 454, § 1, eff. Aug. 28, 1967.

**Sales in Violation of Act Void**

Sec. 53. All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act have been complied with.

**Stolen, Converted or Concealed Vehicle; Application Unlawful**

Sec. 54. It shall be unlawful for any person to make application for a certificate of title on any motor vehicle within this State known by such person to have been stolen, converted, or concealed.

**Rules and Regulations; Forms**

Sec. 55. The Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and to prescribe such forms as are herein provided for, as well as such others as it may deem proper, and shall provide the several designated agents within this State with sufficient supply thereof.

**Designated Agents; Liability on Bond**

Sec. 56. It is hereby expressly made the duty of the several designated agents in this State to comply with the provisions hereof, and any such designated agent failing or refusing so to do shall be liable on his official bond for any damages suffered by any person.

**Fees; Collection and Disposition**

Sec. 57. Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Seventy-five Cents (75¢), of which the first Twenty-five Cents (25¢) shall be accounted for by the County Tax Assessor-Collector and disposed of in one of the two methods hereinafter provided, depending upon whether the County Tax Assessor-Collector is compen-

sated on a fee or a salary basis; and the remaining Fifty Cents (50¢) shall be forwarded to the State Highway Department for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the State Highway Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein. There is hereby appropriated to the State Highway Department all of such fees for salaries, traveling expenses, stationery, postage, contingent expenses, and all other expenses necessary to administer this Act for a period of two years from the effective date of this Act; provided further, that in counties where the Tax Assessor-Collector is compensated on a fee basis, he shall be entitled to retain Five Cents (5¢) out of each Twenty-five Cents (25¢) that he collects for the county as supplemental compensation for administering the Certificate of Title Act so long as the amount retained does not exceed Two Hundred Forty Dollars (\$240) per year, and any sum collected in excess of this amount, together with the remaining Twenty Cents (20¢) collected for the county, shall be turned over to the County Treasurer for deposit in the county general fund.

In counties in which the County Tax Assessor-Collector is compensated on a salary basis, he shall turn the Twenty-five Cents (25¢) over to the County Treasurer for deposit in the Officers' Salary Fund; provided further, that in counties where the County Tax Assessor-Collector is compensated on a salary basis, the Commissioners Court shall fix and allow as additional or supplemental salary for the duties required of him under this Act not less than the minimum nor more than the maximum provided for in the scale which follows:

In counties of less than twenty thousand inhabitants, not less than Ten Dollars (\$10) nor more than Twenty Dollars (\$20) per month; in counties having a population of not less than twenty thousand nor more than forty thousand inhabitants, not less than Twenty Dollars (\$20) nor more than Thirty Dollars (\$30) per month; in counties having a population of not less than forty thousand and one, and not more than sixty thousand inhabitants, not less than Thirty Dollars (\$30) nor more than Fifty Dollars (\$50) per month; in counties having a population of not less than sixty thousand and one inhabitants nor more than one hundred thousand inhabitants, not less than Fifty Dollars (\$50) nor more than Seventy-five Dollars (\$75) per month; in counties having a population of not less than one hundred thousand and one inhabitants and not more than one hundred sixty-five thousand, not less than Seventy-five Dollars (\$75) nor more than One Hundred Dollars (\$100) per month; in counties having a population of not less than one hundred sixty-

five thousand and one inhabitants and not more than two hundred thousand, not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) per month; in counties having a population of two hundred thousand and one inhabitants or more, not less than Two Hundred Dollars (\$200) nor more than Two Hundred Fifty Dollars (\$250) per month.

The added or supplemental salaries for administering the Certificate of Title Act in counties where the County Tax Assessors-Collectors are compensated on a salary basis shall be paid out of the Officers' Salary Fund of the respective counties. The last preceding Federal Census shall govern as to population in all cases under the provisions of this Act.

#### Legislative Intent as to Additional Compensation

Sec. 57a. It is the intention of the Legislature that the compensation provided for Tax Assessors-Collectors by this Act shall be in addition to their regular compensation regardless of whether they are compensated on a fee or salary basis.

#### Alteration of Certificate or Receipt

Sec. 58. It shall be unlawful for any person to, in any manner, alter any manufacturer's or importer's certificate or any receipt or certificate of title after the same has been issued.

#### False or Fictitious Name or Address

Sec. 59. It shall be unlawful to use a false or fictitious name or give a false or fictitious address or make any false statement in any application for certificate of title.

#### Application of Act

Sec. 60. The provisions of this Act shall not apply to vehicles owned or operated by the Federal Government or any of its agencies unless such vehicle is sold to a person required under this Act to procure a Certificate of Title, in which event the provisions hereof shall be fully operative as to such vehicle; but shall apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government; provided however, that the provisions of Section 57 of this Act requiring the payment of fees, shall not apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government.

#### False or Fictitious Name or Address; Misrepresentations

Sec. 61. It shall be unlawful to give any false or fictitious name or address or other information required to be given on the forms provided by the Department to be executed by any applicant for a certificate of title or to falsely misrepresent any fact concerning the release or discharge of any liens on motor vehicles covered by a receipt or a certificate of title.

Transporters of Motor Vehicles by Ship or Plane;  
Inquiry as to Recorded Ownership and  
Right of Possession

Sec. 61A. No master or captain of any ship or plane, and no person or firm who owns any ship or plane or controls the operation of such ship or plane, in whole or in part, shall take on board or allow to be taken on board said ship or plane in this state, any motor vehicle for transportation without having first made an inquiry from the Highway Department of the State of Texas, Certificate of Title section, as to recorded ownership of such motor vehicle. Such master or captain or other person covered herein also shall make a reasonable inquiry as to right of possession of such motor vehicle by the person tendering the vehicle for transportation where the recorded owner of the vehicle is a person other than the person tendering such vehicle for transportation.

Any person who shall violate any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred (\$500.00) Dollars for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

Violations

Sec. 62. Any person who shall violate any provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

Effective Date; Receipt Forms

Sec. 63. (a) This Act shall become effective October 1, 1939, and the Department shall provide each designated agent within this State with a supply of receipt forms for issuing on or before the effective date hereof and shall promulgate such reasonable rules and regulations as are herein provided for on or before August 1, 1939, and provide each designated agent within the State with at least five (5) copies thereof.

(b) The Department or any agent thereof shall not after the 1st of January, 1942, register or renew the registration of any motor vehicle, unless and until the owner thereof shall make application for and be granted an official certificate of title for such vehicle or present satisfactory evidence that a certificate of title for such vehicle has been previously issued to such owner by the Department. Provided, however, this shall not apply to automobiles which were purchased new prior to January 1, 1936.

(c) The owner of a motor vehicle registered in this State shall not after January 1, 1942,

operate or permit the operation of any such motor vehicle upon any highways without first obtaining a certificate of title therefor from the Department, nor shall any person operate any such motor vehicle upon the public highways knowing or having reason to believe that the owner has failed to obtain a certificate of title therefor.

Partial Invalidity

Sec. 64. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection, or clause so declared unconstitutional.

Conflicts With Business and Commerce Code

Sec. 65. In case of any conflict between this Act and the Business and Commerce Code, Chapters 1 through 9,<sup>1</sup> the provisions of the Business and Commerce Code control.

[1925, P.C.; Acts 1939, 46th Leg., p. 602; Acts 1941, 47th Leg., p. 343, ch. 187, §§ 1 to 10; Acts 1943, 48th Leg., p. 404, ch. 272, § 1; Acts 1947, 50th Leg., p. 168, ch. 105, §§ 1 to 3; Acts 1947, 50th Leg., p. 251, ch. 147, § 1; Acts 1947, 50th Leg., p. 284, ch. 174, §§ 1, 2; Acts 1947, 50th Leg., p. 452, ch. 255, § 1; Acts 1947, 50th Leg., p. 544, ch. 321, § 1; Acts 1947, 50th Leg., p. 1008, ch. 426, § 1; Acts 1951, 52nd Leg., p. 482, ch. 301, § 1; Acts 1951, 52nd Leg., p. 620, ch. 368, § 1; Acts 1955, 54th Leg., p. 1147, § 432, § 1, eff. June 14, 1955; Acts 1955, 54th Leg., p. 1172, ch. 452, §§ 1, 2, eff. June 15, 1955; Acts 1959, 56th Leg., p. 142, ch. 84, §§ 1 to 3, eff. Aug. 11, 1959; Acts 1965, 59th Leg., p. 1514, ch. 658, §§ 1, 2, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1035, ch. 454, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 2011, ch. 744, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 895, ch. 123, §§ 1 to 7, eff. May 10, 1971; Acts 1971, 62nd Leg., p. 2771, ch. 897, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3365, ch. 1027, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1680, ch. 607, § 7, eff. Aug. 27, 1973.]

<sup>1</sup> Business and Commerce Code, §§ 1.101 et seq. to 9.101 et seq.

Saved From Repeal

*The Uniform Act Regulating Traffic on Highways, Acts 1947, 50th Leg., p. 967, ch. 421, incorporated in article 6701d, provides, in section 156, that such act is not intended to repeal this article.*

Sections 2 and 3 of each of chapters 147, p. 251, ch. 174, p. 284, ch. 255, p. 452, ch. 321, p. 544 and ch. 426, p. 1008 of Acts 1947, 50th Leg.; sections 4 and 5 of Acts 1947, 50th Leg., p. 168, ch. 105; and sections 2 and 3 of the amendatory act of 1951, provided that the unconstitutionality of any section, subsection, sentence, clause or phrase should not affect the validity of the remaining portion and that the legislature declared that it would have passed the Act and each section, subsection, sentence, clause and phrase thereof irrespective of such unconstitutionality, and repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 5 of the Act of 1959 contained a severability clause.

Acts 1971, 62nd Leg., p. 895, ch. 123, which by sections 1 to 7 amended secs. 3, 5, 6, 33, 35, 41 and 42 of this article, repealed secs. 43 to 46, and added § 65, in section 8, an emergency clause, provided in part: "The fact that the provisions of the Certificate of Title Act that were repealed by implication by the adoption of the Texas Uniform Commercial Code have not been expressly repealed to remove doubt and the need to make consistent the provisions and terminology of the Certificate of Title Act with the Texas Uniform Commercial Code (Business and Commerce Code, Chapters 1 through 9) create an emergency \* \* \*."

**Art. 6687-2. Dealer in Vehicles for Scrap, Resale of Parts or Salvage; Surrender of Unexpired License Plates or Certificates**

Any person, association of persons, corporate or other, who customarily engage in the business of obtaining motor vehicles for scrap disposal or resale of parts therefrom or any other form of salvage, shall immediately remove any unexpired license plates from such motor vehicle and place the same under lock and key. An inventory list of such plates showing the license number and the make and motor number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the State Highway Department. Upon demand the license plates and inventory lists shall be surrendered to the State Highway Department for cancellation. It is further provided that all Certificates of Title covering such motor vehicles obtained for scrap disposal, resale of parts or any other form of salvage shall, upon demand, be surrendered to the State Highway Department for cancellation. It shall thereafter be the duty of the State Highway Department to furnish a signed receipt for the surrendered license plates and Certificates of Title. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by confinement in the county jail not less than ten (10) days nor more than one (1) year, or by both such fine and confinement.

[Acts 1961, 57th Leg., p. 1118, ch. 506, § 1.]

**Art. 6687-3. Record of Engine Number**

The State Highway Commission shall cause to be kept in the State Highway Department a separate register in which shall be recorded the engine number assigned to owners of motor vehicles, from which the original engine number has been removed, erased or destroyed in any manner, and before assigning any such number the Commission shall require the filing of an application for same, attested by oath of the applicant, that he is the owner of such motor vehicle, and such record shall disclose the name and address of the owner; the trade name and model of the motor vehicle; the year manufactured, and the engine number assigned. Anyone failing to comply with the requirements of this article shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 6687-4. Removal of Engine Number**

Whoever makes an application to the county tax collector for the registration of any motor vehicle from which the original engine number has been removed, erased, or destroyed in any manner until it bears the new engine number designated by the State Highway Department

under the provisions of this law shall be fined not less than fifty nor more than one hundred dollars; and it shall be the duty of any person who has applied to and received from the State Highway Department a new engine number as herein provided, to present the receipt received for the registration of such new engine number from the Department to the County Tax Collector when applying for the registration of such motor vehicle under the provisions of the law and failure to so present such receipt to the county tax collector shall subject the owner of said motor vehicle to a fine of not less than ten nor more than fifty dollars. Any tax collector who shall knowingly accept an application for the registration of a motor vehicle from which the original engine number has been removed, erased or destroyed in any manner, and which does not have on it the number designated by the Highway Department, shall be fined not less than ten nor more than fifty dollars.

[1925 P.C.]

**Art. 6687-5. Secondhand Vehicle Transfers**

No person, acting for himself or another, shall sell, trade or otherwise transfer any used or secondhand vehicle required to be registered under the laws of this State unless and until said vehicle at the time of delivery has been duly registered in this State for the current year under the provisions of said law; provided, however, that a dealer may demonstrate such motor vehicle for the purpose of sale, trade or transfer under a dealer's license plate issued such dealer for demonstration purposes. Whoever, acting for himself or another, sells, trades, or otherwise transfers any such vehicle shall deliver to the transferee at the time of delivery of the vehicle the license receipt issued by the department for registration thereof for the current year and a properly assigned Certificate of Title or other evidence of title as required under the provisions of Article 1436-1 of the Penal Code of the State of Texas.<sup>1</sup> Whoever, acting for himself or another, sells, trades or otherwise transfers any secondhand or used vehicle without delivering to the transferee at the time of delivery of the vehicle the license receipt issued therefor for the current year and a properly assigned Certificate of Title as herein required shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred Dollars (\$200).

[1925 P.C.; Acts 1927, 40th Leg., 1st C.S., p. 205, ch. 77, § 1; Acts 1931, 42nd Leg., p. 36, ch. 29, § 1; Acts 1947, 50th Leg., p. 732, ch. 364, § 1.]

<sup>1</sup> Transferred; see, now, art. 6687-1.

**Repeal In Part.**

*This article was repealed by Acts 1939, 46th Leg., p. 602, § 65, as amended by Acts 1941, 47th Leg., p. 343, ch. 187, § 7, in so far as it required the delivering of bills of sale on motor vehicles to the transferee when the same are sold or transferred.*

**Art. 6687-6. Secondhand Vehicle Transfers; Filing; Fee**

The current year registration license receipt and the properly assigned Certificate of Title or other evidence of title required to be delivered to the transferee of a used or secondhand vehicle under the terms of Article 1434 as amended by this Act shall be filed by the transferee within ten (10) days of the date of transfer with the County Tax Assessor-Collector of the county in which the transferee resides as an application for transfer of title as required under Article 1436-1, Penal Code of the State of Texas<sup>1</sup> and as an application for transfer of license and in addition to the fees required under Article 1436-1 for the transfer of title there shall be paid a transfer fee of fifty cents (50¢) for the transfer of registration; provided that if said transferee does not file said applications within ten (10) days a penalty or fee of Five Dollars (\$5) shall be paid upon the filing of such application and such penalty shall be collected for each vehicle upon application filed by the transferee. The Tax Assessor-Collector and his bondsmen shall be liable for the penalty herein provided in the event such penalty is not collected. For his services under this Act the County Tax Assessor-Collector shall retain as commission one-half (½) of fees collected for transfer of registration and one-half (½) of any penalties collected for delinquent filing of applications and the other one-half (½) such fees and penalties shall be reported to and remitted to the Highway Department on Monday of each week as other registration fees are now required to be reported and remitted. Upon receipt of an application for transfer of Certificate of Title and registration the application for transfer of title shall be handled by the Tax Assessor-Collector as provided under Article 1436-1, Penal Code of the State of Texas and in addition the Department shall issue or cause to be issued a transfer of registration receipt on the application for transfer of registration. The Department may promulgate such reasonable rules and regulations and prescribe such forms as it shall deem necessary to carry out the orderly operation of this Act. It is expressly provided that upon the transfer of any vehicle from one person to another in the State of Texas, all papers or documents relating to or supporting transfer of registration and/or Certificate of Title shall be executed in full and dated as of the date of such transfer, and any person who shall transfer a vehicle and execute such papers or documents as provided for herein wholly or partly in blank leaving out any information that is required to be furnished, shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) and not exceeding Two Hundred Dollars (\$200). It is further provided that any transferee who accepts transfer papers as herein provided executed wholly or partly in blank or any person who alters, changes, or mutilates such transfer papers, or whoever violates any

provision of this Section for which no specific penalty is provided shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) nor exceeding Two Hundred Dollars (\$200).

[Acts 1947, 50th Leg., p. 732, ch. 364, § 2.]

<sup>1</sup> Transferred; see, now, article 6687-1.

**Art. 6687-7. Repaired Vehicle Records**

Every person, firm or corporation engaged in the business of operating a repair shop or garage of every kind, within this State, where the repairing, rebuilding or repainting of automobiles is carried on, or electrical work in connection with the repair of automobiles is done and performed, and every person, firm or corporation engaged in the business of the purchase and sale of second hand or used automobiles within this State, shall keep a well bound book in the office or place of business where said work is carried on, or said business conducted, in which shall be kept, in a clear and intelligent manner, a register of each repair or change in any automobile of every description so repaired or dealt in by any party mentioned in this law. Repairs of a value not exceeding one dollar are hereby excepted.

Said register shall contain a substantially complete and accurate description of each car upon which there is performed said repairs, or upon which there is installed any new parts or accessories of any character, and where the said car is bought or sold as a used car, the said register shall particularly show in each of the cases mentioned, the make of the automobile, the number of cylinders, motor number, passenger capacity, model, and also the name, apparent age and sex and any special identifying physical characteristics of the party or parties claiming to be the owner or owners of the automobile, his or their usual place of address, and the State register number of such automobile. In case of the sale of a used or second-hand car by any dealer, or the owner or proprietor of any garage, a like register shall be made as to the name and address and description of said purchaser, the character and description of said car and the state register thereof. Said registers shall be kept in a secure place and be subject at all times to the inspection of any peace officer desiring to examine the same or any party or parties interested in tracing or locating stolen automobiles.

Any owner of a motor vehicle registered in the State Highway Department, as provided by law, and of which motor vehicle the cylinder block has been so damaged as to make necessary the installation of a new cylinder block shall cause the original engine number of the motor vehicle to be stamped with a steel die on the new cylinder block, and the owner of the garage or repair shop so installing the new cylinder block and impressing the number thereon, as herein provided, shall enter a record in a substantially bound book showing the name of the owner of such vehicle, his address, the engine number, and the registration number of

said vehicle. All records required to be kept by the requirements of this article shall be preserved for one year after the date recorded and shall be open to the inspection of the public at all reasonable hours. Whoever shall fail to comply with any provision of this article shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 6687-8. Storage Garages; Report of Vehicles Stored Over 30 Days; Exception**

Sec. 1. Whenever any vehicle of a type subject to registration in this state has been stored, parked or left in a garage, or any type of storage or parking lot for a period of more than thirty days, without an agreement for the storage, parking or keeping of said vehicle, the owner, operator or manager of such garage or parking lot shall report the make, year of manufacture, motor and serial number of such vehicle to the Chief of Police or City Marshal of the city, town or village wherein said garage or parking lot is situated. If said garage or parking lot is not located within the city limits of an incorporated city, town or village, then such report shall be made to the Sheriff of the county wherein such garage or parking lot is located.

Sec. 2. Such report shall be in writing setting forth the information required above and subscribed by the owner, operator or manager of such garage or parking lot.

Sec. 3. Any person who fails to submit the report required under this Act at the end of thirty days following a time that any vehicle shall have been in such garage or parking lot for a period of thirty days shall be fined not more than Twenty-five Dollars (\$25.00); each day's failure to make such a report as required hereunder shall constitute a separate offense.

[Acts 1957, 55th Leg., p. 1361, ch. 462.]

**Art. 6687-9. Abandoned Motor Vehicle Act**

**Short Title**

Sec. 1. This Article shall be cited as the "Texas Abandoned Motor Vehicle Act."

**Definitions**

Sec. 2. As used in this Article:

(1) "Police department" means the Texas Department of Public Safety, the police department of any city, town, or municipality, acting under the general police power authority as vested in such department by its respective governing body, or the sheriff of any county.

(2) "Abandoned motor vehicle" means a motor vehicle that is inoperable and over eight years old and is left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control

of the property for more than 48 hours, or a motor vehicle left unattended on the rights-of-way of any designated county, state or federal highway within this state in excess of 48 hours or in excess of 12 hours on any turnpike project constructed and maintained by the Texas Turnpike Authority.

(3) "Demolisher" means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.

(4) "Garagekeeper" shall mean any owner or operator of a parking place or establishment, motor vehicle storage facility, or any establishment for the servicing, repair, or maintenance of motor vehicles.

(5) "Junked vehicle" means any motor vehicle as defined in Section 1 of Article 827a, Vernon's Texas Penal Code, as amended,<sup>1</sup> which is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked; dismantled; partially dismantled; or discarded.

(6) "Storage Facility" means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

(7) "Motor Vehicle" means any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.<sup>2</sup>

(8) "Antique auto" means passenger cars or trucks that were manufactured in 1925 or before, or which become 35 or more years old.

(9) "Special interest vehicle" means a motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

(10) "Collector" means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

<sup>1</sup> Transferred; see, now, article 6701d-11.

<sup>2</sup> Article 6687-1.

**Authority to Take Possession of Abandoned Motor Vehicles**

Sec. 3. A police department may take into custody any abandoned motor vehicle found on public or private property. In such connection, a police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing abandoned motor vehicles.

## Notification of Owner and Lien Holders

Sec. 4. (a) A police department which takes into custody an abandoned motor vehicle shall notify within 10 days thereof, by registered or certified mail, return receipt requested, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act, as amended (Article 1436-1, Vernon's Texas Penal Code),<sup>1</sup> that the vehicle has been taken into custody. The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle within 20 days after the date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garagekeepers charges if notice is pursuant to the provisions of Section 6 of this Article dealing with garagekeepers and abandoned vehicles. Further, the said notice shall state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this Article. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by registered or certified mail and shall have the same contents required for a notice by registered or certified mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to this section.

<sup>1</sup> Transferred; see, now, article 6687-1.

## Auction of Abandoned Motor Vehicles

Sec. 5. If an abandoned motor vehicle has not been reclaimed as provided for in Section 4 of this Article, the police department shall sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given, and in the case of a garagekeepers lien, the garagekeeper shall be notified of the time and place of such auction. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and shall be entitled to register the purchased vehicle and receive a certificate of title. From the pro-

ceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to Section 4 of this Article. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for 90 days, and then shall be deposited in a special fund which shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from a sale of such other abandoned motor vehicles are insufficient to meet these expenses and costs.

## Garagekeepers and Abandoned Motor Vehicles

Sec. 6. Any motor vehicle left for more than 10 days in a storage facility operated for commercial purposes after notice by registered or certified mail, return receipt requested, to the owner to pick up the vehicle (if such notice is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area where the vehicle was left in such storage facility shall constitute notification), or for more than 10 days after the period when, pursuant to contract, the vehicle was to remain on the premises of such storage facility, and any motor vehicle left for more than 10 days in such storage facility by someone other than the registered owner or left by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle, and shall be reported by the garagekeeper to the police department. Any garagekeeper who fails to report the possession of such a vehicle within 10 days after it becomes abandoned within the meaning of this section shall no longer have any claim for storage of the vehicle. The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle deemed abandoned under the provisions of this section shall follow the notification procedures set forth in Section 4 of this Article, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been complied with. A fee of \$2 shall accompany the report of the garagekeeper to the police department. The \$2 fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of abandoned motor vehicles, and where the Texas Department of Public Safety is the "police department" this fee shall be deposited in the state treasury and shall be used to defray the cost of administering this Act. All abandoned vehicles left in storage facilities which are not reclaimed after such notice in accordance with procedures set forth in Section 4 of this Article shall be taken into custody by the police department and sold in accordance with the pro-

cedure set forth in Section 5 of this Article. The proceeds of a sale under the provisions of this Section shall first be applied to the garagekeeper's charges for servicing, storage and repair; provided, however, that as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction the police department shall retain an amount of two percent of the gross proceeds of the sale of each vehicle auctioned, but in case such percent of the gross proceeds shall be less than \$10, the department shall retain the sum of \$10 to defray expenses of custody and auction. Further, it is provided that when the Texas Department of Public Safety conducts the auction, the aforementioned compensation shall be deposited in the State Treasury and shall be used to defray the expense incurred. Any surplus proceeds remaining from such auction shall be distributed in accordance with Section 5 of this Article. Except for the termination of claim for storage for failure to report an abandoned motor vehicle, nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this State.

#### Disposal to Demolishers

Sec. 7. (a) Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may apply to the Texas Highway Department for authority to sell, give away, or dispose of the vehicle to a demolisher, provided, however, that nothing in this section shall in any way be construed as being in conflict with the provisions of Sections 10 and 11 of this Act. All such applications, except those submitted by units of government, shall be accompanied by a fee of \$2 which shall be deposited in the State Highway Fund.

(b) The application shall set out the name and address of the applicant, the year, make, model, and vehicle identification number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged therein are true and that no material fact has been withheld.

(c) If the Texas Highway Department finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned upon the property of the applicant or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the Texas Highway Department shall follow the notification procedures set forth in Section 4 of this Article.

(d) If any such abandoned motor vehicle is not reclaimed in accordance with Section 4, the Texas Highway Department, upon notification

of such fact by the applicant, shall issue the applicant a certificate of authority to sell the motor vehicle to any demolisher for demolition, wrecking or dismantling. The demolisher shall accept such certificate in lieu of the certificate of title to the motor vehicle.

(e) The Texas Highway Department may issue the applicant a certificate of authority to dispose of such motor vehicle to a demolisher without following the notification procedures of Section 4 of this Act if the motor vehicle is over 8 years old and has no engine or is otherwise totally inoperable.

(f) Notwithstanding any other provision of this Act, any person, firm, corporation, or unit of government in possession of an abandoned vehicle which was authorized to be towed in by a police department and which is over eight years old and has no engine or is otherwise totally inoperable, may, upon affidavit of such fact and approval of the police department, apply to the Texas Highway Department for a certificate of authority to dispose of such vehicle to a demolisher for demolition, wrecking or dismantling only.

(g) The Texas Highway Department is hereby authorized to adopt such rules and regulations and prescribe such forms as may be necessary to carry out the provisions of this section.

#### Duties of Demolishers

Sec. 8. (a) Any demolisher who purchases or otherwise acquires a motor vehicle for purposes of wrecking, dismantling, or demolition shall not be required to obtain a certificate of title for such motor vehicle in his own name. After the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher shall surrender for cancellation the certificate of title or authority. The Texas Highway Department shall issue such forms, rules, and regulations governing the surrender of auction sales receipts and certificates of title as are appropriate. The Certificate of Title Act, as amended (Articles 1436-1 and 1436-2, Vernon's Texas Penal Code),<sup>1</sup> shall govern the cancellation of title of the motor vehicle.

(b) The demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each such motor vehicle was purchased or received and the date when such purchases or receipts occurred. Such records shall be open for inspection by the Texas Highway Department or any police department at any time during normal business hours. Any record required by this section shall be kept by the demolisher for at least one year after the transaction to which it applies. Any demolisher failing to comply with the provisions of this subsection shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than \$100 nor more than \$1,000, or confinement in the county jail not less

than 10 days nor more than six months, or by both such fine and confinement.

<sup>1</sup> Transferred; see, now, articles 6687-1, 6687-2.

#### Junked Vehicles Declared a Public Nuisance

Sec. 9. Junked vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the State, by producing urban blight which is adverse to the maintenance and continuing development of the municipalities in the State of Texas, and such vehicles are therefore, declared to be a public nuisance.

#### City or County Procedures for Abating Nuisance

Sec. 10. Any city, town, or county within this State may adopt procedures for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way; provided, however, that any such procedures shall contain:

(a) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(b) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(c) A provision that after a vehicle has been removed it shall not be reconstructed or made operable.

(d) A provision requiring a public hearing prior to the removal of the vehicle or part thereof as a public nuisance, to be held before the governing body of the city, town, or county or any other board, commission, or official of the city, town, or county as designated by the governing body, when such a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

(e) A provision requiring notice to be given to the Texas Highway Department within five days after the date of removal identifying the vehicle or part thereof. Said Department shall forthwith cancel the certificate of title to such vehicle pursuant to Article 1436-1, Vernon's Texas Penal Code, as amended.<sup>1</sup>

(f) A provision that such procedure shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard or (3) unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(g) A provision for administration of the procedures by regularly salaried, full-time employees of the city, town, or county except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

<sup>1</sup> Transferred; see, now, article 6687-1.

#### Disposal of Junked Vehicles

Sec. 11. Junked vehicles or parts thereof may be disposed of by removal to a scrapyard, demolishers, or any suitable site operated by the city, town, or county for processing as scrap or salvage, which process shall be consistent with Section 10, Subdivision (c) of this Article. A city, town or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or the city, town or county may trans-

fer such vehicles or parts to another, provided such disposal shall be only as scrap or salvage, consistent with Section 10, Subdivision (c) of this Article.

**Authority to Enforce**

Sec. 12. Any person authorized by the city, town or county to administer the provisions of the procedures of the type authorized by this Article may enter upon private property for the purposes specified in the procedures to examine vehicles or parts thereof, obtain information as to the identity of vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to the procedures. The Municipal Court of any city, or town, or the County Commissioners Court of any county, enacting such procedures as provided herein, shall have authority to issue all orders necessary to enforce such procedures.

**Effect of Act on Other Statutes**

Sec. 13. Nothing in this Article shall affect statutes that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

[Acts 1971, 62nd Leg., p. 2436, ch. 784, art. I, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 532, ch. 229, § 1, eff. Aug. 27, 1973.]

**Art. 6687-10. Tractors or Farm Implements; Removal or Alteration of Manufacturer's Number or Identification Mark**

Sec. 1. It shall be unlawful for any person, firm, association, or corporation to remove, alter, deface, cover, or destroy the manufacturer's serial number or other manufacturer's number or other distinguishing identification mark upon any tractor or farm implement for the purpose of concealing or destroying the identity of any such tractor or farm implement.

Sec. 2. It shall be unlawful for any person, firm, association or corporation to sell or offer for sale, any tractor or farm implement whose serial number or manufacturer's number, or other distinguishing identification mark has been removed, altered, defaced, covered or destroyed upon said tractor or farm implement.

Sec. 3. The provision of this Act shall not apply to the machinery of any bona fide farmer who has had such machinery in his possession for a period of six (6) months and has used the same in the operation of his farm enterprise, nor to any second-hand machinery in the possession of an established dealer at the time of the passage of this Act.

Sec. 4. Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Two Hundred (\$200.00) Dollars or by confinement in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1953, 53rd Leg., p. 731, ch. 286.]

**Art. 6687-11. Sale of Motorcycles Without Serial Numbers Properly Affixed**

Sec. 1. In this Act:

(1) "Motorcycle" has the meaning assigned to it in Section 1, Chapter 329, Acts of the 60th Legislature, Regular Session, 1967 (Article 6701c-3, Vernon's Texas Civil Statutes).

(2) "Person" means an individual, partnership, firm, corporation, association, or other private entity.

Sec. 2. No person may sell a motorcycle manufactured after January 1, 1976, unless:

(1) the frame serial number and the engine serial number are affixed in a manner which prevents their removal without defacing the frame or engine; and

(2) the manufacturer has filed with the Department of Public Safety a statement identifying and giving the exact dimensions of the part to which each number is affixed and the location on that part to which the number is affixed.

Sec. 3. The director of the Department of Public Safety shall promulgate reasonable rules and regulations, including the promulgation of forms, to implement the provisions of this Act.

Sec. 4. (a) An individual who violates any provision of this Act is guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or confined in the county jail not more than 30 days or both.

(b) A partnership, firm, corporation, or association which violates any provision of this Act shall be assessed a civil penalty of not more than \$500 for each offense.

(c) Each sale of a motorcycle in violation of this Act constitutes a separate offense.

[Acts 1971, 62nd Leg., p. 3052, ch. 1013, eff. June 15, 1971.]

**Art. 6687-12. Sale of Motor Vehicle Ignition Keys**

No person may sell or offer to sell any motor vehicle master key knowingly designed to fit the ignition switch on more than one motor vehicle. A person who violates this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1965, 59th Leg., p. 1444, ch. 633.]

**Art. 6688 to 6693. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

**Art. 6694. State Highway Fund**

All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the Comptroller upon vouchers drawn by the chairman

of the Commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures.

[Acts 1925, S.B. 84.]

**Art. 6694a. Premiums on Bonds Securing Funds Advanced by Federal Government Payable Out of State Highway Fund**

The State Highway Commission is hereby authorized and empowered to pay out of any available funds to the credit of the State Highway Fund the premium or premiums on surety or assurance bonds that the Federal Government may require to be given by the State Treasurer to secure a fund or funds advanced by the Federal Government to the State of Texas under the recent National Industrial Recovery Act<sup>1</sup> for expenditure by the State Highway Department in the construction and improvement of state highways.

[Acts 1933, 43rd Leg., 1st C.S., p. 74, ch. 21, § 1.]

<sup>1</sup> Act June 16, 1933, c. 90, 48 Stat. 195.

**Art. 6695. Misrepresenting Weight; Punishment; Venue for Prosecutions**

If any person shall operate, or permit to be operated, any motor vehicle, licensed under this law, of a greater weight than stated in his declaration or application for license, he shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars, and each use of such vehicle shall constitute a separate offense; and venue for prosecutions hereunder shall lie in any county in which any motor vehicle is operated with a greater gross weight than that stated in the declaration or application for a license for such motor vehicle.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 144, ch. 110, § 11.]

**Art. 6696. Unsafe Vehicle**

If the Department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and may for a like reason revoke any registration already issued.

[Acts 1925, S.B. 84.]

**Art. 6696a. Modified or Weighted Vehicles**

It is unlawful to operate on any public roadway of this state any passenger vehicle or commercial vehicle which has been modified from the original design or weighted in any manner so that any portion of such vehicle other than the wheels has less clearance from the surface of the level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel in contact with such roadway. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50.

[Acts 1969, 61st Leg., p. 1056, ch. 349, § 1, eff. Sept. 1, 1969.]

**Art. 6696b. Tampering with Odometer**

Sec. 1. It is unlawful for any person, with the intent to defraud, to disconnect, turn back or reset the odometer of a motor vehicle so as to reduce the number of miles indicated on the odometer gauge. The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

Sec. 2. (a) For the first conviction of a violation of this Act, punishment shall be by imprisonment in the county jail for not exceeding two years, or by a fine not exceeding \$1,000, or by both such fine and such imprisonment.

(b) If it be shown on the trial of a case involving a violation of this Act, that the defendant has been once before convicted of the same offense, he shall, on his second or subsequent conviction be punished by confinement in the county jail for not less than 30 days nor more than two years, and by a fine not exceeding \$2,000.

[Acts 1973, 63rd Leg., p. 1685, ch. 611, eff. Aug. 27, 1973.]

**Art. 6697. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

**Art. 6697a. Placement of Signs Along Rights-of-Way by Political Subdivisions**

A political subdivision may place advisory safety or useful directional information signs of a type that cannot be mistaken as official signs along the public rights-of-way under their control other than State highway routes for revenue purposes.

[Acts 1971, 62nd Leg., p. 1249, ch. 310, § 1, eff. Aug. 30, 1971.]

**Art. 6698. Municipal Regulation**

The certificate of registration and numbering for purposes of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality or other political subdivision of this state, and no such registration fees or other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other subdivision of the state. This provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation. Nothing herein shall in anywise authorize or empower any county or incorporated city or town in this state to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks; provided that such cities or towns are hereby authorized and empowered to levy and collect a city permit fee, not to exceed two (2%) per cent of the gross receipts per annum, for the operation of each motor vehicle transporting passengers for hire or a street rental charge based upon gross receipts, not to

exceed two (2%) per cent per annum, for the operation of motor vehicles transporting passengers for hire, other than motor vehicles operating under a permit or certificate of the Railroad Commission of the State of Texas or the Interstate Commerce Commission; and provided further that nothing in this Article shall be construed as impairing or altering in any way the provisions relating to payments in any contracts, agreements, or franchises now in existence, or hereafter made between an incorporated city or town and the owners or operators of motor vehicles transporting passengers for hire.

[Acts 1925, S.B. 84; Acts 1947, 50th Leg., p. 512, ch. 302, § 1.]

#### Art. 6699. County Traffic Officers

The Commissioners Court of each county, acting in conjunction with the Sheriff, may employ not more than five (5) regular deputies, nor more than two (2) additional deputies for special emergency to aid said regular deputies, to be known as county traffic officers to enforce the highway laws of this State regulating the use of the public highways by motor vehicles. Said deputies shall be, whenever practicable, motorcycle riders, and shall be assigned to work under the direction of the Sheriff. They shall give bond and take oath of office as other deputies. They may be dismissed from service on request of the Sheriff whenever approved by the Commissioners Court, or by said Court on its own initiative, whenever their services are no longer needed or have not been satisfactory. The Commissioners Court shall fix their compensation prior to their selection, and may provide at the expense of the county, necessary equipment for said officers. The pay of said deputies shall not be included in the settlements of the Sheriff in accounting for the fees of office. For the purpose of this law, the Commissioners Courts of counties whose funds from the motor registration fees provided herein amount to Thirty Thousand Dollars (\$30,000) or over, may use not exceeding five (5) percent of said funds; and not to exceed seven and one-half (7½) percent of such funds in counties receiving a lesser amount from such registration. Said deputies shall at all times cooperate with the police department of each city or town within the county, in the enforcement of said traffic laws therein and in all other parts of the county, and shall have the same right and duty to arrest violators of all laws as other Deputy Sheriffs have.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 438, ch. 225, § 1; Acts 1967, 60th Leg., p. 1047, ch. 458, § 1, eff. June 12, 1967.]

#### Art. 6699a. Salaries of Deputies

Deputies shall be paid a salary out of the general county fund not to exceed one hundred and fifty (\$150) dollars per month, the salary to be fixed by the commissioners' court, and in addition thereto the commissioners' court is hereby authorized to provide at the expense of the county such necessary uniforms, caps and

badges, such badges to be not less than two inches by three inches in dimensions, and other necessary equipment, to include a motorcycle and its maintenance, as is necessary for them to discharge their duties. The salaries paid to said deputies acting as such highway officer shall be paid direct to said deputies by the commissioners' court, and such salaries shall be independent of any salary or fee paid to the sheriff and all of his deputies not so acting as highway officers, and the sheriff shall not be required to account for the salaries provided for herein as fees of office or as salary to the sheriff or his other deputies. Such deputies as are provided for herein shall be appointed by the commissioners' court and be deputized by either the sheriff or any constable of the county in which they are appointed, and no other officers shall make arrests in this State for violation of laws relating to highways now in effect in this State. Such deputies as provided for herein shall at all times when in the performance of their duties wear a full uniform with a cap and badge, the badge to be displayed on the outside of the uniform in a conspicuous place. Such officers shall remain in and upon the highway, and at all times patrol the same while in the performance of their duties, only leaving the highway to pursue any offender whom such officers were unable to apprehend upon the highway itself. No arrest by any such officer shall be binding or valid upon the person apprehended if the officer making such arrest was in hiding or if he set a trap to apprehend persons traveling upon the highway. No fees or charges whatever shall be made for the service of such officers provided for herein, nor shall any fee for the arrests made by such officers be charged and taxed as costs or paid to such officers in any case in which such officers shall make an arrest. Such officers shall perform all their duties and make arrests for violation of any law of this State appertaining to the control and regulation of vehicles operating in and upon any highway, street, or alley of this State. The district engineer in whose district the county in which such officers operate shall advise with such officers as to the enforcement of the various State laws pertaining to control and regulation of traffic upon the highways, and in case such officers shall not perform their duties in enforcing such laws, the district engineer may complain to the commissioners' court, and upon the filing of such complaint in writing duly signed by the district engineer, the commissioners' court shall summons before them for a hearing the officer or officers so complained of, and if such hearing develops that such officer or officers are not performing their duties as required of them, then such officer or officers shall immediately be discharged from all of their duties and powers as herein provided for, and other officers shall forthwith be appointed. Should any portion or section of this article be held invalid or unconstitutional, such holding shall not affect the validity or constitutionality of any other por-

tion of this article, and all other portions not held invalid or unconstitutional shall remain in full force and effect.

[Acts 1925, S.B. 84.]

#### Art. 6699b. Unconstitutional

#### Art. 6700. Disposition of Fines

Fines collected for violations of any highway law as set forth in Chapter 1 of Title 13 of the Penal Code, shall be used by the municipality or the counties in which the same are assessed and to which the same are payable, in the construction and maintenance of roads, bridges and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers.

[Acts 1925, S.B. 84.]

#### Art. 6701. Width of Wheels

No person, firm, association or corporation shall sell or offer for sale in this State any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. Any firm, association or corporation violating the terms of this article shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, to be collected for the benefit of the county in which such violation may occur.

[Acts 1925, S.B. 84.]

#### Art. 6701a. Permits for Heavy Trucks on Highways

Sec. 1. When any person, firm or corporation shall desire to operate over a state highway super-heavy or over-size equipment for the transportation of such commodities as cannot be reasonably dismantled, where the gross weight or size exceeds the limits allowed by law to be transported over a state highway the State Highway Department may, upon application, issue a permit for the operation of said equipment with said commodities, when said State Highway Department is of the opinion that the same may be operated without material damage to the highway. Provided, however, that all cities and towns having a state highway within their limits shall designate to the State Highway Department the route within the city or town to be used by said equipment operating over the state highway. When so designated, the route shall be shown on all

maps routing said equipment with said commodities by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on State Highways for the equipment with said commodities within cities or towns. No fee, permit or license shall be required by any city or town for movement of said super-heavy or over-size equipment on the route of a state highway designated by the State Highway Department, or on said special route designated by a city or town.

Sec. 1-a. In order to facilitate the issuance of such special permits, the Highway Department shall designate in each county a special agent or agents who shall at all times be available for the purpose of issuing such permits in compliance with this law.

Sec. 2. The application for a permit as provided for in this Act, shall be in writing and contain the following:

- (a) The kind of equipment to be operated, with complete description of the same, and the weight of same.
- (b) The kind of commodity to be transported, and the weight of same.
- (c) The highway and the distance over which the same is to be operated.
- (d) The same shall be dated and signed by the applicant.

Sec. 3. Before a permit is issued the applicant for the same shall file with the State Highway Department a bond in an amount to be set and approved by the Department, payable to the State Highway Department of Texas and conditioned that the applicant will pay to the State Highway Department any damage that might be sustained to the highway by virtue of the operation of the equipment for which a permit is issued to operate, and venue of any suit for recovery upon said bond may be any court of competent jurisdiction in Travis County. There shall also accompany the application for permit a fee of Five Dollars (\$5) for single trip permits, Ten Dollars (\$10) for time permits not exceeding a period of thirty (30) days; Fifteen Dollars (\$15) for time permits not exceeding a period of sixty (60) days and Twenty Dollars (\$20) for time permits not exceeding a period of ninety (90) days, which fee shall be by the State Highway Department deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. All payments of fees shall be made by cashier or certified check, postal or express money orders. As a further prerequisite to the issuance of any such permits, the equipment to be operated under such permit must have been registered under Acts 1929, 41st Legislature, 2nd Called Session, Chapter 88, as amended (Vernon's Civil Statutes 6675a) for maximum gross weight applicable to such vehicle under Section 5, Acts 1929, 41st Legislature, 2nd Called Session, Chapter 42, as amended (Vernon's Penal Code, Article 827a), not exceeding seventy-two thousand (72,000) pounds total gross weight. The requirement of a bond contained

in this section does not apply to the driving or transporting of farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment. The bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

Sec. 4. Any permit provided for in this Act issued by the State Highway Department, shall be substantially in the following form:

(a) It shall contain the name of the applicant and shall be dated and signed by the State Highway Engineer or a Division Engineer.

(b) It shall state the kind of equipment to be transported over the highway, together with the weight and dimensions of same and the kind and weight of the commodity to be transported.

(c) It shall state the highway and distance over which the same is to be transported.

(d) It shall state any condition upon which the permit is issued.

[Acts 1929, 41st Leg., 2nd C.S., p. 71, ch. 41; Acts 1949, 51st Leg., p. 376, ch. 200, § 1; Acts 1953, 53rd Leg., p. 505, ch. 183, § 1; Acts 1971, 62nd Leg., p. 2816, ch. 917, § 1, eff. June 15, 1971.]

#### Art. 6701a-1. Weight of Lumber

In determining the amount of poundage being carried by any truck engaged in the transportation of lumber over any highway in this State, and for the purpose of determining such weight, the weights set out in the schedule of "average weights of Southern Pine Association" issued in 1933 shall govern as to the weight of such lumber.

[Acts 1935, 44th Leg., p. 832, ch. 349, § 1.]

#### Art. 6701b. Liability for Injuries to Guest; Exceptions; Insurance

Sec. 1. (a) No person who is related within the second degree of consanguinity or affinity to the owner or operator of a motor vehicle and who is being transported over the public highways of this State by the owner or operator of the motor vehicle as his guest without payment for such transportation, shall have a cause of action for damages against such owner or operator for injuries, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator, or caused by his heedlessness or his reckless disregard of the rights of others. There shall be no such immunity for an owner or operator who is not so related to the guest.

(b) Nothing in this Act affects any judicially-developed and developing rules under which a person is or is not totally or partially immune from tort liability to another by virtue of a family relationship.

(c) When any liability claim is made by a guest against the owner or operator or his lia-

bility insurance carrier, the owner or operator or his liability insurance carrier shall be entitled to an offset, credit, or deduction against any award made to such guest in an amount of money equal to the amounts paid by the owner, operator or his automobile liability insurance carrier for medical expenses of such guest; provided, however, that nothing herein shall be construed to authorize a direct action against a liability insurance company if such right does not presently exist at law.

Sec. 2. This Act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger being transported by such public carrier, or by such owner or operator.

[Acts 1931, 42nd Leg., p. 379, ch. 225; Acts 1973, 63rd Leg., p. 42, ch. 28, § 3, eff. Sept. 1, 1973.]

#### Art. 6701c. Repealed by Acts 1955, 54th Leg., p. 817, ch. 303, § 1

#### Art. 6701c-1. Commercial Vehicles or Truck-Tractors; Operation by Other Than Owner

##### Definitions

Sec. 1. The following words and phrases, when used in this Act, shall, for the purpose of this Act, have the meanings respectively ascribed to them in this section, as follows:

"Vehicle". Every mechanical device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, including motor vehicles, commercial motor vehicles, truck-tractors, trailers, and semi-trailers, severally, as hereinafter defined, but excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"Commercial Motor Vehicle". Every motor vehicle, other than a motorcycle or passenger car, designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails.

"Truck-tractor". Every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Filing Copy of Lease, Memorandum or Agreement; Letter of Acknowledgment; Copies Carried in Cab; Display; Exceptions

Sec. 2. No commercial motor vehicle nor any truck-tractor shall be operated over any public highway of this state by any person other than the registered owner thereof, or his agent, servant or employee under the supervision, direction, and control of such registered owner unless such other person under whose

supervision, direction and control said motor vehicle or truck-tractor is operated shall have caused to be filed with the Department an executed copy of the lease, memorandum or agreement under which such commercial motor vehicle or truck-tractor is being operated.

Immediately upon receipt thereof, the Department shall deliver or mail forthwith to the lessee of such motor vehicle or truck-tractor, a letter of acknowledgment thereof, with the official stamp or seal of the Department affixed to such letter.

Such letter of acknowledgment shall contain:

1. The names of the lessor and lessee and their addresses;
2. The term of the lease;
3. The make, and motor or serial number of the vehicle covered by such lease; and
4. Such other data as the Department may determine.

For the purposes of this Act, a lease, memorandum or agreement shall not be considered as filed with the Department unless and until the lessee of such motor vehicle or truck-tractor shall have mailed by certified mail a duly executed copy of said lease, memorandum or agreement in the United States Mail properly addressed to the Department, and at the time of said mailing obtaining from the Post Office a receipt for certified mail properly post-marked by the Post Office Clerk showing the date and place of mailing.

The lessee of said motor vehicle or truck-tractor shall have in the cab thereof during the first five (5) days of operation under said lease, memorandum or agreement a true copy of said lease, memorandum or agreement, together with the letter of transmittal of such lease to the Department, as well as said receipt for certified mail, which shall be effective for a period not to exceed five (5) days from the date issued. Following the expiration of said five (5) day period the lessee of said motor vehicle or truck-tractor shall have in the cab thereof at all times while such motor vehicle or truck-tractor is being operated on the roads or highways of this state, a true copy of the original letter of acknowledgment, as provided herein, with the official stamp or seal of the Department affixed thereto. Such letter of acknowledgment, or an effective receipt for certified mail, must be displayed to any officer authorized to enforce this law, upon request of such officer.

The operation of any such leased motor vehicle or truck-tractor over the public highways or roads of this state without having in the cab thereof such letter of acknowledgment from the Department with its official stamp or seal affixed thereto, or an effective receipt for certified mail, as well as the letter of transmittal and copy of said lease, memorandum or agreement, as provided for herein, shall be unlawful.

Wherever the word "Department" is used herein it means "Department of Public Safety of the State of Texas."

Provided, however, that this Act shall not apply to any vehicle lawfully registered as a farm vehicle under the provisions of Acts of the 41st Legislature, 2nd Called Session, 1929, Chapter 88, page 172, Section 6a, as amended by subsequent session of the Legislature and as codified as Article 6675a-6a, Revised Civil Statutes of Texas. And provided further, that this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, and aggregate; nor shall this Act apply to such vehicles as are used exclusively in the transportation of sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, aggregate, and other similar road-building substances ordinarily transported in bulk when such substances are being transported to or from the job site of any construction project being performed for or on behalf of the Federal Government, the State of Texas or any political subdivision thereof, or to or from the construction site of any national defense project, airport and roadways leading thereto, or to or from the construction site of any road, highway, and expressway; nor shall the requirements of this Act apply to any motor vehicle or truck-tractor which is used exclusively in the transportation of liquefied petroleum gases when such vehicle is being operated in accordance with the provisions of Chapter 363, page 612, Acts 52nd Legislature, 1951, and the provisions of Article 6053, Revised Civil Statutes of Texas, 1925, as amended, and the rules and regulations adopted by the Railroad Commission of Texas governing the handling and odorization of liquefied petroleum gases and specifications for the design, construction and installation of equipment used in the transportation, storage, dispensing, and consumption of liquefied petroleum gases. And provided further, that this Act shall not apply to commercial motor vehicles and truck-tractors leased or rented:

(a) without drivers from an individual, person, co-partnership, association or corporation whose principal business is the bona fide leasing or renting of motor vehicle equipment without drivers for compensation to the general public;

(b) and who maintain an established place of business and whose lease or rental contracts require the motor vehicle equipment to return to the established place of business;

(c) and who have dated and filed within ten (10) days of January 1st, April 1st, July 1st, and October 1st of each year, with the Department of Public Safety, a complete list giving a full description of all such commercial motor vehicles and truck-tractors owned by such individual, person, co-partnership, association or corporation, as of the date of the report, and

available for lease or rent without drivers for compensation. The first complete list filed herein must be accompanied by a fee of One (\$1.00) Dollar for each vehicle listed therein, together with a photostat or certified copy of the registration or title papers on every such motor vehicle; however, no such fee need be filed in subsequent quarterly filings unless such subsequent list contains additional equipment, in which event a fee of One (\$1.00) Dollar, together with photostat or certified copy of the registration or title papers on such additional equipment shall be filed. Provided, however, that the provisions of this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport household goods, used office furniture and equipment.

If for any reason any one or more of the foregoing exceptions contained in this Act is unconstitutional or invalid, it is hereby declared to be the intention of the Legislature to enact, and it does here now enact and pass, this Act without any such exception, one or more, and if any such exception, one or more, be invalid, then such exception alone shall fail and be held for naught, and the remainder of the Act shall be and remain unimpaired, and it is so enacted.

**Subsequent Lease, Memorandum or Agreement  
Covering Same Vehicle**

Sec. 3. When any such lease, memorandum, or agreement, as required by Section 2 of this Act, shall have been filed with the Department of Public Safety covering the operation of any commercial motor vehicle or truck-tractor, no further such lease, memorandum, or agreement covering the operation of the same commercial motor vehicle or truck-tractor may be accepted by the Department of Public Safety for filing until the existing lease, memorandum, or agreement shall have expired in accordance with its own terms or there shall have been filed with the Department of Public Safety a full release thereof.

**Contents of Lease, Memorandum or Agreement;  
Information Confidential**

Sec. 4. Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby; that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission or Interstate Commerce Commission, that the per-

son other than the registered owner shall provide for public liability and property damage insurance on each and every vehicle during the term of such lease, memorandum or agreement of not less than Five Thousand (\$5,000.00) Dollars for bodily injury to any one person or a total of Ten Thousand (\$10,000.00) Dollars for any one accident involving two or more persons and property damage for any one accident of not less than Five Thousand (\$5,000.00) Dollars, and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect.

All information contained in any lease, memorandum, or agreement filed with the Department of Public Safety as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department of Public Safety; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas.

**Filing Fee; Photostat or Certified Copy of Registration  
or Title Papers**

Sec. 5. Any filing of a lease, memorandum, or agreement, or of a release thereof, as provided for in Section 2 and Section 3 of this Act shall be accompanied by a fee of One (\$1.00) Dollar, for each and every vehicle operated, or to be operated, under such lease, memorandum or agreement, together with a photostat or certified copy of the registration or title papers on every such motor vehicle, which shall be deposited in the Treasury of the State of Texas to the credit of the Operator's and Chauffeur's License Fund to be used by the Department of Public Safety for the purpose of enforcement of this Act.

**Sign or Placard**

Sec. 6. No commercial motor vehicle or truck-tractor shall be operated over any public highway of this State when said vehicle is being operated by a person other than the registered owner or his agent, servant or employee under the supervision, direction, and control of such registered owner, unless there shall be affixed in a conspicuous place on each side thereof a sign or placard, in letters not less than two inches in height or less than one-fourth inches in width, showing the name and address of such person, firm or corporation under whose control, direction and supervision said vehicle is being operated, whether individually or through an agent, servant or employee,

under the supervision, direction, and control of such person, firm or corporation other than the registered owner. Such sign or placard as is required by the provisions of this section to be affixed in a conspicuous place on each side of the vehicle need not be painted on such vehicle but may be placed on a durable placard, canvas or other material by painting, drawing, stenciling or otherwise, and in such event such placard or canvas or other material shall be securely affixed to each side of such vehicle.

#### No Presumption of Violation of Other Laws

Sec. 7. Compliance with the requirements of this Act shall not be construed as making a prima facie case of a bona fide lease covering a motor vehicle, nor shall compliance be construed as creating any presumption that the commercial motor vehicle or truck-tractor in question is not being operated in violation of the terms and provisions of the Acts of the 41st Legislature, 1929, Chapter 314, page 698, as amended by Acts of the 42nd Legislature, 1931, Chapter 277, page 480, as amended by Acts of the 47th Legislature, 1941, Chapter 442, page 713, and Chapter 290, page 463, and codified as Article 911b, Vernon's Civil Statutes, and Article 1690b, Vernon's Penal Code.<sup>1</sup>

<sup>1</sup> Transferred; see, now, art. 911b, § 16.

#### Loan of Vehicle Without Compensation

Sec. 8. It shall be a complete defense to any alleged violation hereof that such commercial motor vehicle or any truck-tractor was under loan to the driver thereof or his employer, and that no compensation was paid for the use thereof.

#### Violations; Punishment

Sec. 9. The lessor, lessee, person, driver, operator, or other person, corporation, firm or co-partnership, operating or driving or causing or permitting the operating or driving of such commercial motor vehicle or truck-tractor failing to comply with any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than One Hundred (\$100.00) Dollars and not exceeding Two Hundred (\$200.00) Dollars.

[Acts 1953, 53rd Leg., p. 561, ch. 209; Acts 1955, 54th Leg., p. 754, ch. 273, § 1; Acts 1963, 58th Leg., p. 108, ch. 60, § 1, eff. Aug. 23, 1963.]

#### Art. 6701c-2. Special License Tags for Operators of Mobile Amateur Radio Equipment

Sec. 1. Residents of the State of Texas who hold an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission and who operate receiving and transmitting mobile amateur radio equipment in passenger cars or in trucks, commonly known as pickup trucks, with a manufacturer's rated carrying capacity not to exceed 2,000 pounds, upon application, accompanied by proof of ownership of such amateur license, complying with the State motor vehicle laws relating to registration and licensing of motor vehicles, and upon payment of the regular license fee for tags and the payment of an

additional fee of Two (\$2) Dollars for the first year of such registration and One (\$1) Dollar for each annual registration thereafter, shall be issued license plates, upon which may be inscribed the official amateur call letters of such applicant as assigned by the Federal Communications Commission.

Sec. 2. Applicants shall furnish proof of the Federal Communications Commission authority and their call letters to the State Highway Department, on or before the 1st day of October, preceding each registration year, and the State Highway Department shall furnish their respective Tax Assessors and Collectors license plates bearing the call letters of the applicant.

Sec. 3. It shall be the duty of the County Tax Assessors and Collectors to keep on file a copy or copies of the license receipts issued for such call letter license plates. At the regular registration period the Tax Collector shall give the applicant the call letter tags and corresponding receipts. Such call letter license tags shall be the legal registration insignia for the registration year for which issued, on the vehicle containing the mobile amateur radio equipment, while applicant is the bona fide owner of said vehicle.

Sec. 4. If during the registration year the applicant shall sell, trade, give, or in any way dispose of the vehicle upon which the call letter license tags are affixed, he shall turn such tags into the County Tax Assessor and Collector and receive from him replacement license tags for a fee as prescribed by law.

[Acts 1953, 53rd Leg., p. 633, ch. 244; Acts 1973, 63rd Leg., p. 207, ch. 92, § 1, eff. Aug. 27, 1973.]

#### Art. 6701c-3. Protective Headgear for Motorcycle Operators and Passengers

##### Motorcycle Defined

Sec. 1. In this Act, "motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or any three-wheeled vehicle equipped with a cab, seat and seat belt and designed to contain the operator of the vehicle within the cab. "Motorcycle" does not include a motor-assisted bicycle as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).<sup>1</sup>

<sup>1</sup> See article 6701d, § 2(n).

##### Necessity of Protective Headgear

Sec. 2. After December 31, 1967, no person may operate a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety, nor may any person carry a passenger on a motorcycle on a public street or highway of this state unless the passenger wears protective headgear which has been approved by the Department of Public Safety, nor may any person ride as a passenger on a motorcycle on a public street or highway

of this state unless he wears a protective headgear which has been approved by the Department of Public Safety.

Minimum Safety Standards for Protective Headgear

Sec. 3. The department shall prescribe minimum safety standards for protective headgear used by motorcyclists in this state in order to provide for the safety and welfare of motorcycle operators and passengers. The department may adopt all or any part of the standards of the United States of America Standards Institute for protective headgear for vehicular users.

Issuance of Safety Standards to Manufacturers; Applications for Approval of Protective Headgear; Hearing for Manufacturers Not Complying With Standards

Sec. 4. (a) The department shall make the safety standards it prescribes for protective headgear available to each manufacturer of protective headgear upon request of the manufacturer.

(b) Any manufacturer of protective headgear may apply to the department, on an application form prescribed by the department, for approval of the design specifications of protective headgear. The application shall be accompanied by a deposit of \$15 for each design or model to be approved.

(c) The department shall grant an application for approval of protective headgear if the specifications of the headgear conform to the standards prescribed under Section 3 of this Act. The department may recognize the American Association of Motor Vehicle Administrators Certificate of Equipment Approval as evidence that the minimum standards prescribed by the United States of America Standards Institute have been satisfied.

(d) When the department has reason to believe that an approved style or make of headgear being sold commercially does not comply with the standards prescribed under Section 3 of this Act, the department, to determine compliance with the standards, may conduct a hearing as prescribed under Subsections (d) and (e), Section 108B, Chapter 303, Acts of the 54th Legislature, Regular Session, 1955 (Article 6701d, Vernon's Texas Civil Statutes).

List of Approved Protective Headgear

Sec. 5. The department shall compile a list naming each style and make of protective headgear approved by the department and make the list available upon request to the public and to persons who sell protective headgear.

Inspection of Protective Headgear by Peace Officers

Sec. 6. Any peace officer may stop and detain any motorcycle operator or passenger for the purpose of inspecting his protective headgear to determine if the headgear is of a style and make approved by the department.

Violations; Penalties

Sec. 7. A person who violates Section 2 of this Act is guilty of a misdemeanor and upon

conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1967, 60th Leg., p. 788, ch. 329, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1677, ch. 607, § 4, eff. Aug. 27, 1973.]

CHAPTER ONE A. TRAFFIC REGULATIONS

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Art. 6701d. Uniform Act Regulating Traffic on Highways

ARTICLE I—WORDS AND PHRASES DEFINED

Definition of Words and Phrases

Sec. 1. The following words and phrases when used in this Act shall, for the purpose of

this Act, have the meanings respectively ascribed to them in this Article.

SUBDIVISION I—VEHICLES AND EQUIPMENT DEFINED

Vehicles

Sec. 2. (a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor or motor-assisted bicycle.

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, and private vehicles operated by volunteer firemen while answering a fire alarm.

(e) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of standards as produced and sponsored by the National Commission on Safety Education of the National Education Association, Washington, D. C., and is being used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children.

(f) "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than fourteen (14) inches in diameter.

(g) "Implement of Husbandry" means every vehicle designed and adapted for use as a farm implement, machinery or tool as used in tilling the soil, but shall not include any passenger car or truck.

(h) "Light Truck" means any truck, as defined in this Act, with a manufacturer's rated carrying capacity not to exceed two thousand (2,000) pounds and is intended to include those trucks commonly known as pickup trucks, panel delivery trucks and carryall trucks.

(i) "Motor driven Cycle" means every motor-cycle, including every motor scooter, with a motor which produces not to exceed 5-brake horsepower (brake horsepower developed by a prime mover, as measured by a brake applied to the driving shaft), and every bicycle with motor attached other than a motor-assisted bicycle.

(j) "Passenger Car" means every motor vehicle, except motorcycles and motor driven cycles, designed for carrying ten (10) passengers or less and used for the transportation of persons.

(k) "Special Mobile Equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch-digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(l) "Trackless Trolley Coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(m) "Muffler" means a device consisting of a series of chambers or baffle plates or other mechanical design for the purpose of receiving exhaust gas from an internal combustion engine and/or turbine wheels for the purpose of receiving exhaust gas from a diesel engine, both of which are effective in reducing noise.

(n) "Motor-assisted bicycle" means a bicycle which may be propelled by human power or a motor, or by both, with a motor of a capacity of less than sixty (60) cubic centimeters piston displacement, which is capable of a maximum speed of not more than twenty (20) miles per hour on a flat surface with not more than one (1) percent grade in any direction when the motor is engaged.

Exhaust Emission System

Sec. 2A. Any motor vehicle engine modification to control or cause the reduction of substances emitted from motor vehicles or motor vehicle engines beginning with the model year 1968, which system is installed on or incorporated in any motor vehicle or motor vehicle engine in compliance with the requirements imposed by or under authority of the (United States) Motor Vehicle Air Pollution Control Act, Public Law 89-272, 42 U.S.C. 1857, et seq.,<sup>1</sup> or other applicable law.

<sup>1</sup> 42 U.S.C.A. § 1857 et seq.

Tractors

Sec. 3. (a) Truck Tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement

for drawing plows, mowing machines, and other implements of husbandry.

(c) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Truck and Bus

Sec. 4. (a) Truck. Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(b) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than taxicab, designed and used for the transportation of persons for compensation.

Trailers

Sec. 5. (a) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Semi-Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(c) Pole Trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(d) House Trailer. A trailer or semitrailer

(1) which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(2) whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in Subdivision (1), but which is used instead permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

Tires

Sec. 6. (a) Pneumatic Tire. Every tire in which compressed air is designed to support the load.

(b) Solid Tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) Metal Tire. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard non-resilient material.

Railroads and Street Cars

Sec. 7. (a) Railroad. A carrier of persons or property upon cars, other than street cars, operated upon stationary rails.

(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

(c) Street Car. A car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

Explosives

Sec. 8. (a) Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(b) Flammable Liquid. Any liquid which has a flash point of 70° F., or less, as determined by a tagliabue or equivalent closed-cup test device.

SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED

Director, Department, State, Urban District

Sec. 9. (a) Director. The Director of the Department of Public Safety of this state.

(b) Department. The Department of Public Safety of this state acting directly or through its duly authorized officers and agents.

(c) State. A state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.

(d) Urban District. The territory contiguous to and including any highway or street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred (100) feet for a distance of one-quarter (1/4) of a mile or more on either side except in incorporated cities.

Person, Pedestrian, Driver, Etc.

Sec. 10. (a) Person. Every natural person, firm, copartnership, association, or corporation.

(b) Pedestrian. Any person afoot.

(c) Driver. Every person who drives or is in actual physical control of a vehicle.

(d) Owner. A person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

(e) Personal Injury. A wound or injury to any part of the human body which necessitates treatment.

(f) Nonresident. Every person who is not a resident of this State.

#### Police Officer

Sec. 11. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

#### Local Authorities

Sec. 12. Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

### SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

#### Highways, Roads, Streets and Sidewalks

Sec. 13. (a) Street or Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(c) Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(e) Laned Roadway. A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(f) Through Highway. Every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway in obedience to a stop sign, yield sign or other official traffic-control device, when such signs or devices are erected as provided in this Act.

(g) Limited-Access or Controlled Access Highway. Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at

such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(h) Arterial Street. Any U. S. or State numbered route, controlled access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

#### Intersection

Sec. 14. (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(c) The junction of an alley with a street or highway shall not constitute an intersection.

(d) Notwithstanding the provisions of Subsection (b) of this section, the State Highway Commission and local authorities may, in matters of highway and traffic engineering design, consider the separate intersections of divided highways with medians thirty (30) feet wide or wider, as defined in Subsection (b) of this section, as components of a single intersection.

#### Crosswalk

Sec. 15. (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surfaces.

#### Safety Zones

Sec. 16. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

#### Business and Residence Districts

Sec. 17. (a) Business District. The territory contiguous to and including a highway when within any six hundred (600) feet along such highway there are buildings in use for business or industrial purposes, including but

not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

#### Signals and Devices

Sec. 18. (a) Official Traffic-Control Devices. All signs, signals, markings, and devices not inconsistent with this Act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-Control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

#### Traffic

Sec. 19. Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.

#### Right-of-Way

Sec. 20. The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

### SUBDIVISION IV—MISCELLANEOUS DEFINITIONS

#### Daytime and Nighttime

Sec. 20A. "Daytime" means from one-half ( $\frac{1}{2}$ ) hour before sunrise to one-half ( $\frac{1}{2}$ ) hour after sunset, and "nighttime" means at any other hour.

#### Driveaway-Tow Away Operation

Sec. 20B. Any operation in which any motor vehicle, trailer or semi-trailer, singly or in combination, new or used, constitutes the commodity being transported, when one set or more of wheels of any such vehicle are on the roadway during the course of the transportation, whether or not any such vehicle furnishes the motive power.

#### Gross Weight

Sec. 20C. The weight of a vehicle without load plus the weight of any load thereon.

#### Nonresident's Operating Privilege

Sec. 20D. The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this State.

#### Park or Parking

Sec. 20E. Means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

#### Stand or Standing

Sec. 20F. Means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

#### Stop

Sec. 20G. When required means complete cessation from movement.

#### Stop or Stopping

Sec. 20H. When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

### ARTICLE II—OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

#### Provisions of Act Refer to Vehicles Upon the Highways—Exceptions

[Text as amended by Acts 1971, 62nd Leg., p. 727, ch. 83, § 11]

Sec. 21. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Articles IV and V of this Act and Articles 802,<sup>1</sup> 802b,<sup>2</sup> and 802c,<sup>3</sup> Penal Code of Texas, 1925, as amended shall apply upon highways and other public places.

<sup>1</sup> Transferred; see, now, article 6701-1.  
<sup>2</sup> Transferred; see, now, article 6701-2.

<sup>3</sup> Repealed; see, now, Penal Code, § 19.05.

[Text as amended by Acts 1971, 62nd Leg., p. 2384, ch. 741, § 1]

Sec. 21. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Article IV shall apply upon all roads owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the roads, and the provisions of Articles IV and V shall apply upon streets,

highways, or privately owned access ways or parking areas provided by business establishments, without charge, for the convenience of their customers, clients, or patrons but not upon privately owned residential property or the property of any garage or parking lot for which a charge is made for storage or parking of motor vehicles.

#### Required Obedience to Traffic Laws

Sec. 22. It is unlawful and unless otherwise declared in this Act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this Act.

#### Obedience to Police Officers

Sec. 23. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

#### Additional Exceptions

Sec. 24. (a) Unless specifically made applicable, the provisions of this chapter except those contained in Article V of this Act and Articles 802b,<sup>1</sup> 802c<sup>2</sup> and 802e,<sup>3</sup> Penal Code of Texas, 1925, as amended shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

(b) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(c) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions.

(d) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of Section 124 of this Act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(e) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such

provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(f) The provisions of this Act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this State or any county, city, town, district, or any other political subdivision of the State, subject to such specific exceptions as are set forth in this Act with reference to authorized emergency vehicles.

<sup>1</sup> Transferred; see, now, article 67017-2.

<sup>2</sup> Repealed; see, now, § 19.05.

<sup>3</sup> Transferred; see, now, article 67017-4.

#### Traffic Laws Apply to Persons Riding Animals or Driving Animal-Drawn Vehicles

Sec. 25. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except those provisions of this Act which by their very nature can have no application.

#### Provisions of Act Uniform Throughout State

Sec. 26. The provisions of this Act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act.

#### Powers of Local Authorities

Sec. 27. (a) The provisions of this Act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from—

1. Regulating the stopping, standing or parking of vehicles;
2. Regulating traffic by means of police officers or traffic-control devices;
3. Regulating or prohibiting processions or assemblages on the highways;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks;
6. Designating any highway as a through highway and requiring that all vehicles stop or yield before entering or crossing the same, or designating any intersection as a stop intersection or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to such intersection;
7. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

9. Altering the speed limits as authorized herein;

10. Adopting such other traffic regulations as are specifically authorized by this Act.

(b) No local authority shall erect or maintain any stop sign or yield sign or traffic-control device at any location so as to require the traffic on any State highway, including Farm-to-Market or Ranch-to-Market roads, to stop or yield before entering or crossing any intersecting highway unless such signs or devices are erected and maintained by virtue of an agreement entered into between such local authority and the State Highway Department under the provisions of Senate Bill No. 415, Acts of the 46th Legislature, Regular Session.<sup>1</sup>

(c) No ordinance or regulation enacted under Subsection (4), (5), (6), or (9) of Subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

<sup>1</sup> Article 6673-b.

**This Act Not to Interfere With Rights of Owners of Real Estate Property With Reference Thereto**

Sec. 28. Nothing in this Act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this Act, or otherwise regulating such use as may seem best to such owner.

**ARTICLE III—TRAFFIC SIGNS, SIGNALS, AND MARKINGS**

**State Highway Commission to Adopt Sign Manual**

Sec. 29. The State Highway Commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this Act for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway Officials.

**State Highway Department to Sign State Highways**

Sec. 30. (a) The State Highway Department may place and maintain, or under the authority of Senate Bill No. 415, Acts, 46th Legislature, Regular Session,<sup>1</sup> provide for such placing and maintaining such traffic-control devices, conforming to its manual and specifications, upon all state highways as it may deem necessary, to indicate and carry out the provisions of this Act or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any high-

way under the jurisdiction of the State Highway Department except by the latter's permission.

<sup>1</sup> Article 6673b.

**Local Traffic-Control Devices**

Sec. 31. (a) Local authorities, in their respective jurisdiction, may place and maintain any traffic-control devices upon any highway under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this Act, or local traffic ordinances, or regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the State Highway Department's manual and specifications.

**Obedience to and Required Traffic-Control Devices**

Sec. 32. (a) The driver of any vehicle and the motorman of any streetcar shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this Act, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Act.

(b) No provision of this Act for which official traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

**Traffic-Control Signal Legend**

Sec. 33. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors Green, Red and Yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicu-

lar traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian control signal, as provided in Section 34, pedestrians, facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication

1. Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

2. Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in Section 34, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady red indication

1. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but, if none, before entering the crosswalk on the near side of the intersection, and may then turn right or, if the intersecting streets are both one-way streets and left turns are permissible, may turn left, after standing until the intersection may be entered safely, yielding right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. Traffic not so turning shall remain standing until an indication to proceed is shown. The State Highway Commission, municipal authorities, and Commissioners Courts, within their respective jurisdictions, may prohibit such turns on a steady red signal by posting a notice that turns of that type are prohibited. Such notice shall be erected at such intersection giving notice thereof.

2. Unless otherwise directed by a pedestrian control signal as provided in Section 34, pedestrians facing a steady red signal alone shall not enter the roadway.

(d) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of

any such sign or marking the stop shall be made at the signal.

(e) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

**Pedestrian Control Signals**

Sec. 34. Whenever special pedestrian control signals exhibiting the words "Walk," "Don't Walk," or "Wait" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(b) Don't Walk or Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "Walk" signal shall proceed to a sidewalk or safety island while the "Don't Walk" or "Wait" signal is showing.

**Flashing Signals**

Sec. 35. (a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through an intersection or past such signal only with caution.

(b) This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Section 86 of this Act.

**Lane-Direction-Control Signals**

Sec. 35A. When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown.

**Display of Unauthorized Signs, Signals or Markings**

Sec. 36. (a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to

direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) No person shall place or maintain a flashing light or flashing electric sign of any kind or color within one thousand (1,000) feet of any intersection unless a permit is granted by the State Highway Commission for such flashing light or electric sign.

(d) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(e) In addition to being a misdemeanor as set out in Section 143, every such prohibited sign, signal, light or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

#### Interference With Official Traffic-Control Devices or Railroad Signs or Signals

Sec. 37. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

### ARTICLE IV—ACCIDENTS

#### Accidents Involving Death or Personal Injuries

Sec. 38. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 40. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment in the penitentiary not to exceed five (5) years or in jail not exceeding one (1) year or by fine not exceeding Five Thousand (\$5,000.00) Dollars, or by both such fine and imprisonment.

#### Accident Involving Damage to Vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. Every such stop shall be made

without obstructing traffic more than is necessary. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

#### Duty to Give Information and Render Aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle colliding with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

#### Duty Upon Striking Unattended Vehicle

Sec. 41. The driver of any vehicle which collides with and damages any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in, or securely attached to and plainly visible, the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

#### Duty Upon Striking Fixtures Upon a Highway

Sec. 42. The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license, and shall make report of such accident when and as required in Section 44 hereof.

#### Immediate Reports of Accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

#### Investigation of Accidents

Sec. 43A. Upon notification of a law enforcement officer by the driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of Fifty Dollars (\$50) or

more, the officer may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as super-market or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients, or patrons, parking lots owned and operated by the State or any other parking area owned and operated for the convenience of, and commonly used by, the public. It is specifically provided, however, that this Section shall not apply to accidents occurring on privately owned residential parking areas or on privately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

#### Written Report of Accidents

Sec. 44. (a) The driver of a vehicle involved in an accident resulting in injury to, or death, of any person, or total property damage to an apparent extent of Twenty-five Dollars (\$25) or more, shall within ten (10) days after such accident forward a written report of such accident to the Department. Any person who shall fail to make such a report shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 143. The venue for the prosecution of such offense shall be in the county where the accident occurred.

(b) The Department may require any driver of a vehicle involved in an accident of which report must be made as provided in this Section to file supplemental reports whenever the original report is insufficient in the opinion of the Department and may require witnesses of accidents to render reports to the Department.

(c) Every law enforcement officer, who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this Section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within ten (10) days after such accident, forward a written report of such accident to the Department.

#### Accident Report Forms

Sec. 45. (a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved.

(b) Every accident report required to be made in writing shall be made on the appropri-

ate form approved by the department and shall contain all of the information required therein unless not available.

#### Coroners to Report

Sec. 46. Every coroner or other official performing like functions shall on or before the tenth (10th) day of each month report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident giving the time and place of the accident and the circumstances relating thereto.

#### Accident Reports

Sec. 47. All accident reports made by persons involved in accidents, by garages, or peace officers shall be without prejudice to the individual so reporting and shall be privileged and for the confidential use of the Department or other State agencies having use for the records for accident prevention purposes, except that the Department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident, provided that accident reports submitted by peace officers after January 1, 1970, are public records open for inspection. After January 1, 1970, the Department shall provide a copy or copies of any peace officer's report submitted after that date to any person upon written request and payment of a Two Dollar (\$2) fee. Such copy may be certified by the Department for an additional fee of Two Dollars (\$2). In the event no report is on file the Department may certify such fact for a fee of Two Dollars (\$2). All fees collected under this Section shall be placed in the Operators and Chauffeurs License Fund and are hereby appropriated to be used by the Department in the administration of this Act.

#### Department to Tabulate and Analyze Accident Reports

Sec. 48. The Department shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

#### Any Incorporated City May Require Accident Reports

Sec. 49. (a) Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident, except that no report may be required if there is no injury to or death of any person and the apparent total property damage is less than Twenty-five (\$25.00) Dollars, or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of Section 47 of this Act.

(b) Any incorporated city, town, village, or other municipality may by ordinance require the person in charge of any garage or repair

shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in Section 44, or struck by any bullet, to report to the department within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

ARTICLE V—DRIVING WHILE UNDER THE INFLUENCE OF DRUGS AND RECKLESS DRIVING

Persons Under the Influence of Drugs

Sec. 50. (a) It is unlawful and punishable as provided in Subsection (b) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this State. The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this State shall not constitute a defense against any charge of violating this section.

(b) Every person who is convicted of a violation of Subsection (a) of this section shall be punished by imprisonment for not less than ten (10) days nor more than two (2) years, or by fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment. On a second or subsequent conviction under this section he shall be punished by imprisonment for not less than ninety (90) days nor more than two (2) years, and, in the discretion of the court, a fine of not more than One Thousand Dollars (\$1,000).

Homicide by Vehicle

Sec. 50A. (a) Whoever shall unlawfully and unintentionally (with a conscious disregard for the rights of others) cause the death of another person while engaged in the violation of any State law or municipal ordinance applying to the operation or use of a vehicle or streetcar or to the regulation of traffic shall be guilty of homicide when such violation is the proximate cause of said death.

(b) Any person convicted of homicide by vehicle shall be fined not less than Five Hundred Dollars (\$500) nor more than Two Thousand Dollars (\$2,000), or shall be imprisoned in the county jail not less than three (3) months nor more than one (1) year, or may be so fined and so imprisoned; provided, however, that such person may be tried only upon indictment by a grand jury and may be tried only in the county where the violation occurred.

Reckless Driving

Sec. 51. (a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon such conviction by a fine of not more than Two Hundred Dollars (\$200), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

ARTICLE VI—DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING, ETC.

Drive on Right Side of Roadway—Exceptions

Sec. 52. (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
4. Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designated certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under Subsection (a) 2 hereof. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or out of an alley, private road, or driveway.

Passing Vehicles Proceeding in Opposite Directions

Sec. 53. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half (1/2) of the main-traveled portion of the roadway as nearly as possible.

## Overtaking a Vehicle on the Left

Sec. 54. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

## When Overtaking on the Right is Permitted

Sec. 55. (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;

2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main traveled portion of the roadway.

## Limitations on Overtaking on the Left

Sec. 56. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this Act and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred (200) feet of any approaching vehicle.

## Further Limitations on Driving to Left of Center of Roadway

[Text of subsection (a) as amended by Acts 1971, 62nd Leg., p. 732, ch. 83, § 24]

Sec. 57. (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. Where sight restriction is such that the section of highway being traversed lies within a no passing zone as determined and marked in accordance with Section 58;

2. When approaching within one hundred (100) feet of or passing through any intersection or railroad grade crossing within the limits of an incorporated city or town;

3. Outside the limits of an incorporated city or town when approaching within one hundred (100) feet of or passing through any intersection or railroad grade crossing and the intersection or crossing is indicated by signs or markings in accordance with Section 58;

4. When approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

[Text of subsection (a) as amended by Acts 1971, 62nd Leg., p. 2418, ch. 767]

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. Where sight restriction is such that the section of highway being traversed lies within a no passing zone as determined and marked in accordance with Section 58;

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing;

3. When approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

4. When awaiting access to a ferry operated by the State Highway Commission.

(b) The foregoing limitations shall not apply upon a one-way roadway, nor to any driver of a vehicle turning left into or from an alley, private road, or driveway.

(c) The State Highway Commission shall post signs along the approach to any ferry operated by it notifying motorists that passing is prohibited when there is a standing line of vehicles awaiting access to the ferry.

## No-Passing Zones

Sec. 58. (a) The State Highway Commission on State highways under its jurisdiction, and local authorities on highways under their jurisdiction, are authorized to determine those portions of any highway under their appropriate jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or marking on the roadway indicate the

beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in Subsection (a) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length. However, this subsection shall not be construed as prohibiting the crossing of such pavement striping, or the center line within a no-passing zone marked by signs only, in making a left turn into or out of an alley, private road, or driveway.

#### One-Way Roadways and Rotary Traffic Islands

Sec. 59. (a) The State Highway Commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic the driver of a vehicle shall drive only in the direction designated.

(c) The driver of a vehicle passing around a rotary traffic island shall drive only to the right of such island.

#### Driving on Roadways Laned for Traffic

Sec. 60. Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) The driver of a vehicle shall drive as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three (3) lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the direction of every such sign.

(d) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers

of vehicles shall obey the directions of every such device.

#### Following Too Closely

Sec. 61. (a) The driver of a motor vehicle shall, when following another vehicle, maintain an assured clear distance between the two vehicles, exercising due regard for the speed of such vehicles, traffic upon and conditions of the street or highway, so that such motor vehicle can be safely brought to a stop without colliding with the preceding vehicle, or veering into other vehicles, objects or persons, on or near the street or highway.

(b) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall whenever conditions permit leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) The drivers of motor vehicles driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall drive so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicles to enter and occupy such space without danger. This provision shall not apply to funeral processions.

#### Driving on Divided Highways

Sec. 62. Whenever any highway has been divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established by public authority.

#### Restricted Access

Sec. 63. No person shall drive a vehicle onto or from any limited access or controlled access roadway except at such entrances and exits as are established by public authority.

#### Restrictions on Use of Controlled-Access Roadway

Sec. 64. The State Highway Commission may by resolution or order entered in its minutes, and local authorities may by ordinance, with respect to any limited-access or controlled-access roadway under their respective jurisdictions prohibit the use of any such roadway by parades, funeral processions, pedestrians, bicycles, nonmotorized traffic, or by any person operating a motor driven cycle.

The State Highway Commission or the local authority adopting any such prohibitory regulation shall erect and maintain official traffic-control devices on the limited-access or controlled-access highway on which such regulations are applicable and when in place no person shall disobey the restrictions stated on such devices.

#### ARTICLE VII—TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

##### Required Position and Method of Turning at Intersections

Sec. 65. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) The State Highway Commission and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

##### Turning on Curve or Crest of Grade Prohibited

Sec. 66. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

##### Starting Parked Vehicle

Sec. 67. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with safety.

##### Turning Movements and Required Signals

Sec. 68. (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 65, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon

a roadway unless and until such movement can be made with safety. Except under conditions set out in Section 24(a) no person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals provided for in Section 69 of this Act shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

##### Signals by Hand and Arm or Signal Lamps

Sec. 69. (a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in Subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

##### Method of Giving Hand and Arm Signals

Sec. 70. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn. Hand and arm extended horizontally.
2. Right turn. Hand and arm extended upward.
3. Stop or decrease speed. Hand and arm extended downward.

The signals herein required shall be given either by means of the hand-and-arm, or by a signal lamp or signal device approved by the department.

#### ARTICLE VIII—RIGHT-OF-WAY

##### Vehicles Approaching or Entering Intersection

Sec. 71. (a) The driver of a vehicle approaching the intersection of a different street or roadway shall stop, yield and grant the privilege of immediate use of such intersection in obedience to any stop sign, yield right-of-way sign or traffic control device erected by public

authority, and after so stopping, may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

(b) The driver of a vehicle on a single lane street or roadway, or a street or roadway consisting of only two traffic lanes, upon approaching the intersection, not otherwise controlled by traffic signs or signals, of a divided street or roadway, or of a street or roadway divided into three or more marked traffic lanes, shall stop, yield and grant the privilege of immediate use of such intersection to vehicles on such other street which are within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

(c) The driver of a vehicle on an unpaved street or roadway approaching the intersection of a paved roadway shall stop, yield and grant the privilege of immediate use of such intersection to any vehicle on such paved roadway which is within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard, and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such paved street or roadway.

(d) The driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic control signs or signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

(e) A driver obligated to stop and yield the right-of-way in accord with Sections (a), (b), (c) and (d) of Section 71, who is involved in a collision or interference with other traffic at such intersection is presumed not to have yielded the right-of-way as required by this Act.

**Vehicle Turning Left**

Sec. 72. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

**Vehicle Entering Stop or Yield Intersection**

Sec. 73. (a) Preferential right-of-way at an intersection may be indicated by stop signs

or yield signs as authorized in Subsection (a) of Section 91 of this Act.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by Subsection (b) of Section 91A and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. Provided, however, that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right-of-way.

**Vehicle Entering Highway From Private Road or Driveway**

Sec. 74. The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered.

**Operation of Vehicles and Street Cars on Approach of Authorized Emergency Vehicles**

Sec. 75. (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of Section 124 of this Act, or of a police vehicle properly and lawfully making use of an audible signal only:

1. The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

## ARTICLE IX—PEDESTRIANS' RIGHTS AND DUTIES

### Pedestrians Subject to Traffic Regulations

Sec. 76. (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 33 of this Act, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this Article.

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

(d) The driver of a vehicle emerging from or entering an alley, building, private road or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk extending across such alley, building entrance, road or driveway.

### Pedestrians' Right-of-Way in Crosswalks

Sec. 77. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 78(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

### Crossing at Other Than Crosswalks

Sec. 78. (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by offi-

cial traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

### Drivers to Exercise Due Care

Sec. 79. Notwithstanding other provisions of this Article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

### Pedestrians to Use the Right Half of Crosswalks

Sec. 80. Pedestrians shall move, whenever possible upon the right half of crosswalks.

### Pedestrians on Roadways

Sec. 81. (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when possible walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride, contributions, employment or business from the occupant of any vehicle.

(d) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

## ARTICLE X—STREET CARS AND SAFETY ZONES

### Passing Street Car on Left

Sec. 82. (a) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any street car proceeding in the same direction, whether such street car is actually in motion or temporarily at rest, except:

1. When so directed by a police officer;
2. When upon a one-way street; or
3. When upon a street where the tracks are so located as to prevent compliance with this section.

(b) The driver of any vehicle when permitted to overtake and pass upon the left of a street car which has stopped for the purpose of receiving or discharging any passenger shall reduce speed and may proceed only upon exercising due caution for pedestrians, and shall accord pedestrians the right-of-way when required by other sections of this Act.

### Passing Street Car on Right

Sec. 83. The driver of a vehicle overtaking upon the right any street car stopped or about to stop for the purpose of receiving or dis-

charging any passenger shall stop such vehicle at least five (5) feet to the rear of the nearest running board or door of such street car and thereupon remain standing until all passengers have boarded such car or upon alighting have reached a place of safety, except that where a safety zone has been established a vehicle need not be brought to a stop before passing any such street car but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians.

#### Driving on Street-Car Tracks

Sec. 84. (a) The driver of any vehicle proceeding upon any street car track in front of a street car upon a street shall remove such vehicle from the track as soon as possible after signal from the operator of said street car.

(b) When a street car has started to cross an intersection, no driver of a vehicle shall drive upon or cross the car tracks within the intersection in front of the street car.

(c) The driver of a vehicle upon overtaking and passing a street car shall not turn in front of such street car so as to interfere with or impede its movement.

#### Driving Through Safety Zone Prohibited

Sec. 85. No driver of a vehicle shall at any time drive through or within a safety zone.

### ARTICLE XI—SPECIAL STOPS AND RESTRICTED SPEEDS REQUIRED

#### Saved from Repeal

*The first sentence of section 2 of Acts 1963, 58th Leg., p. 455, ch. 161, which added sections 166 to 172 to this article, provided: "Nothing in this Act shall be construed to repeal or in any way modify, alter or amend Sections 86, 87, 88, 89 and 90 of the Uniform Act Regulating Traffic on Highways, codified as Article 6701d, Vernon's Texas Civil Statutes and being Acts of the Fiftieth Legislature, Regular Session, 1947, Chapter 421, page 927."*

#### Obedience to Signal Indicating Approach of Train

Sec. 86. Whenever any person driving a vehicle approaches a railroad grade crossing, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed until he can do so safely when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;

(b) A crossing gate is lowered, or when a human flagman gives or continues to give a signal of the approach or passage of a train;

(c) A railroad engine approaching within approximately fifteen hundred (1500) feet of the highway crossing emits a signal audible from such distance and such engine by reason of its speed or nearness to such crossing is an immediate hazard;

(d) An approaching train is plainly visible and is in hazardous proximity to such crossing.

#### All Vehicles Must Stop at Certain Railroad Grade Crossings

Sec. 87. The State Highway Commission and local authorities with respect to highways under their respective jurisdictions are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs or other standard traffic-control devices thereat. When such stop signs or other standard traffic-control devices are erected, the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care, and in the exercise of their authority to determine safety hazards existing at grade crossings of streets, roads, highways and other public rights-of-way with railroad track or tracks by the State and all political subdivisions thereof the costs for installation and maintenance of mechanically operated grade crossing safety devices, gates, signs and signals shall be apportioned and paid on the same percentage ratio and in the same proportionate amounts by the State and all political subdivisions thereof as is the presently established policy and practice of the State of Texas and the Federal Government.

#### Certain Vehicles Must Stop at All Railroad Grade Crossings

Sec. 88. (a) The driver of any motor bus carrying passengers for hire, or of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

#### Vehicles Carrying Explosive Substances or Flammable Liquids; Reducing Speeds or Stopping at Railroad Grade Crossings

Sec. 89. (a) The driver of any vehicle carrying explosive substances or flammable liquids as its principal cargo before crossing at grade any track or tracks of a railroad, shall if travelling in excess of twenty (20) miles per

hour, reduce the speed of such vehicle to twenty (20) miles per hour before approaching within two hundred (200) feet from the nearest rail of such railroad and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of the train, except as hereinafter provided, and shall not proceed until precautions have been taken to ascertain that the course is clear.

(b) The driver of any vehicle carrying explosive substances or flammable liquids as its principal cargo before crossing at grade any track or tracks of a railroad on streets and highways within the limits of any corporate town or city shall stop the vehicle not more than fifty (50) feet nor less than fifteen (15) feet from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until precautions have been taken to ascertain that the course is clear.

(c) The requirements contained in Section 89, Paragraphs (a) and (b) above shall not apply when any of the following circumstances or conditions exist:

(1) When a police officer or a crossing flagman, or a traffic control signal directs traffic to proceed.

(2) Where a railroad flashing signal is installed and displays no indication of an approaching train.

(3) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such markings can be read from the driver's position.

(4) At a streetcar crossing within a business or residential district of a municipality.

(5) Railroad tracks used exclusively for industrial switching purposes within a business district.

(d) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the requirements contained in sections 86 and 87 of this Act.

#### Moving Heavy Equipment at Railroad Grade Crossings

Sec. 90. (a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two (2) adjacent axles or in any event of less than nine (9) inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such

railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

#### Authority to Designate Through Highways and "Stop" and "Yield" Intersections

Sec. 91. (a) The State Highway Commission with reference to State (and county) highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop or yield signs at specified entrances thereto or may designate any intersection as a stop intersection or as a yield intersection and erect like signs at one or more entrances to such intersection.

(b) Every said sign shall conform to the manual and specifications for uniform traffic-control devices as adopted by the State Highway Commission. Every stop or yield sign shall be located as near as practicable at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

#### Stop Signs and Yield Signs

Sec. 91A. (a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in Section 91 of this Act.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle and every motorman of a streetcar approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(c) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

#### Emerging From Alley, Driveway or Building

Sec. 92. The driver of a vehicle within a business or residence district emerging from

an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alley way or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

**ARTICLE XII—STOPPING, STANDING, AND PARKING**

**Stopping, Standing, or Parking Outside of Business or Residence Districts**

Sec. 93. (a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred (200) feet in each direction upon such highway.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

**Officers Authorized to Remove Illegally Stopped Vehicles**

Sec. 94. (a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

(c) Any commissioned member of the Department of Public Safety is hereby authorized to remove a vehicle from a highway to the nearest garage or other place of safety, or to a garage designated or maintained by the governmental agency of which the officer is a member, under the circumstances hereinafter enumerated:

1. When any vehicle is left unattended upon any bridge, viaduct or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;
2. When any vehicle is illegally parked so as to block the entrance to any private driveway and it is impracticable to move such vehicle from in front of the driveway to another point on the highway;

3. When any vehicle is found upon a highway and report has previously been made that such vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled;

4. When any such officer has reasonable grounds to believe that any vehicle has been abandoned;

5. When a vehicle upon a highway is so disabled that its normal operation is impossible or impractical and the person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such an extent as to be unable to provide for its removal or custody, or are not in the immediate vicinity of the disabled vehicle;

6. When an officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is by this code or other law required to take the person arrested immediately before a magistrate.

(d) Any commissioned member of the Department of Public Safety is hereby authorized to remove any vehicle parked or standing in or on any portion of a highway when, in the opinion of the said member of the Department of Public Safety, the said vehicle constitutes a hazard, or interferes with a normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstance the safety of said vehicle is imperiled.

**Stopping, Standing or Parking Prohibited in Specified Places**

Sec. 95. (a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

1. Stop, stand or park a vehicle:
  - a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
  - b. On a sidewalk;
  - c. Within an intersection;
  - d. On a crosswalk;
  - e. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the governing body of any incorporated city, town or village indicates a different length by signs or markings;
  - f. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
  - g. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
  - h. On any railroad track;

i. At any place where official signs prohibit stopping.

2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

a. In front of a public or private driveway;

b. Within fifteen (15) feet of a fire hydrant;

c. Within twenty (20) feet of a crosswalk at an intersection;

d. Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway;

e. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance (when properly sign-posted);

f. At any place where official signs prohibit standing.

3. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

a. Within fifty (50) feet of the nearest rail of a railroad crossing;

b. At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

#### Additional Parking Regulations

Sec. 96. (a) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within eighteen (18) inches of the right-hand curb or edge of the roadway.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within eighteen (18) inches of the right-hand curb or edge of the roadway, or its left-hand wheels within eighteen (18) inches of the left-hand curb or edge of the roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any Federal-aid or State highway unless the State Highway Engineer has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The State Highway Department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stop-

ping, standing or parking of vehicles on any highway where in the opinion of the State Highway Engineer, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

### ARTICLE XIII—MISCELLANEOUS RULES

#### Unattended Motor Vehicle

Sec. 97. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

#### Driving on Mountain Highways

Sec. 98. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as possible and upon approaching any curve where the view is obstructed within a distance of two hundred (200) feet along the highway, shall give audible warning with the horn of such motor vehicle.

#### Coasting Prohibited

Sec. 99. (a) The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck, truck tractor or bus when traveling upon a downgrade shall not coast with the clutch disengaged.

#### Following Fire Apparatus or Ambulance

Sec. 100. (a) The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where the fire apparatus has stopped to answer a fire alarm.

(b) No driver of a vehicle, except a driver on official business, may follow closer than five hundred (500) feet behind an ambulance when the flashing red lights of the ambulance are operating. No driver of a vehicle may drive or park his vehicle at a place where an ambulance has been summoned for an emergency call in a manner calculated to interfere with the arrival or departure of the ambulance.

#### Crossing Fire Hose

Sec. 101. No driver of a street car or vehicle shall drive over an unprotected hose of a fire department when laid down on any street, private driveway, or street car track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Putting Glass, Etc., on Highway Prohibited

Sec. 102. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

Removing Materials From Highway

Sec. 103. (a) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(b) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Overtaking and Passing School Bus

Sec. 104. (a) The driver of a vehicle upon a highway inside or outside of a business or residence district upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in Section 124 of this Act, and said driver shall not proceed until such school bus resumes motion or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

Regulations Relative to School Buses

Sec. 105. (a) The Texas Education Agency and the State Board of Control, by and with the advice of the Director of the Department of Public Safety, shall have joint and complete responsibility to adopt and enforce regulations governing the design, color, lighting and other equipment, construction, and operation of all school buses for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this State and such regulations shall by reference be made a part of any such contract with a school district. The State Board of Control shall coordinate and correlate all specification data, finalize and issue the specifications so adopted as provided for by Section 10, Chapter 304, Acts of the Fifty-fifth Legislature, 1957 (codified as Article 664-3, Vernon's Texas Civil Statutes). In the promulgation of such regulations, emphasis shall be placed on safety features and long-range, maintenance-free factors; provided, however, all school buses shall be purchased on competitive bids as provided by Article 634(B), Vernon's Texas Civil Statutes. Every school district, its officers and

employees, and every person employed under contract by a school district shall be subject to said regulations. The State Board of Control shall purchase equipment to conform to these standards (as prescribed by the above-mentioned body).

(b) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is being stopped or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

(c) Every school bus shall be equipped with convex mirrors or other devices which enable the driver to have a clear view of the area immediately in front of the vehicle that would otherwise be hidden from his view.

Limitations as to Trailers

Sec. 106. (a) No driver of a motor vehicle shall drive upon any highway outside of the limits of an incorporated city or town drawing or having attached thereto more than one (1) vehicle except as herein provided; such vehicle may be a trailer, semi-trailer, pole trailer, or another vehicle; provided, however, that there may be attached to motor vehicles used exclusively in the actual harvesting of perishable fresh fruits and vegetables not to exceed two (2) trailers, under the following conditions:

1. The origin of fruits and vegetables must be an orchard or a field where the same are grown and the destination must be a packing or processing plant or shed not more than fifty (50) miles distant from such field or orchard.

2. The combination of vehicles must be operated only during the period from sunrise to sunset, and at a rate of speed not to exceed twenty-five (25) miles per hour.

3. The fruits and vegetables transported in such trailers must be in bulk or field crates.

4. The width, height, and gross weight of each trailer and/or combination of trailers shall conform to the requirements set forth in Article 827a, Revised Penal Code of the State of Texas, and all other laws of this State governing same.

5. No one harvesting trailer shall exceed seventeen (17) feet, nine (9) inches in length, nor shall any combination of two (2) trailers and motor vehicle as provided herein, exceed fifty-five (55) feet overall length.

6. No laborers or "harvesting hands" shall be carried in or on the trailers while so used.

Repeal in Part

*Acts 1965, 59th Leg., p. 298, ch. 130, §§ 1, 2 repealed section 106(a) of this article to the extent, and only to the extent of its conflict with Acts 1965, 59th Leg., p. 123, ch. 50, (S.B.No.3), which, inter alia, amended*

*Penal Code, Art. 827a, section 3(c), relating to lengths of motor vehicles, truck-tractors, trailers and combinations thereof, and repealed all other laws and parts of laws in conflict with Chapter 50 (S.B.No.3) to the extent of such conflict.*

(b) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed fifteen (15) feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

(c) When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve (12) inches square.

(d) It is hereby specifically provided that no motor vehicle shall draw more than three (3) motor vehicles attached thereto by the triple saddle mount method, that is by mounting the front wheels of the trailing vehicles on the bed of another leaving the rear wheels only of such trailing vehicles in contact with the roadway, nor shall such combinations of motor vehicles exceed the width, length, height, or gross weight limitations fixed by Texas statutes.

#### Fire Extinguishers

Sec. 107. Every school bus and every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

### ARTICLE XIV—EQUIPMENT

#### Scope and Effect of Regulations

Sec. 108. (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this Article, or which is equipped in any manner in violation of this Article, or for any person to do any act forbidden or fail to perform any act required under this Article.

(b) Nothing contained in this Article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this Article.

(c) The provisions of this Article with respect to equipment on vehicles shall not apply to motorcycles or motor-driven cycles, implements of husbandry, road machinery, road rollers or farm tractors, except as herein made applicable.

(d) The Department is hereby authorized to approve or disapprove equipment, material and

lighting devices as referred to in Article XIV, and to issue and enforce regulations not inconsistent with law, establishing standards and specifications for their approval, installation and adjustment when in use on motor vehicles. Such regulations shall correlate with, and, insofar as practicable, conform to the then current standards and specifications of the Society of Automotive Engineers, or in its discretion any other recognized organization which sets standards for such equipment, material and lighting equipment.

(e) The Department is further authorized to establish the procedure which shall be followed when any device is submitted for approval. Any person, firm, or corporation, may submit to the Department any such lamp, device, equipment, or material, required to be approved by the Department, and to make application that the same be tested as to conformity with the requirements of the law and the regulations of the Department. Upon such application being made, the Department shall cause such test to be made as may be necessary to determine whether to approve or disapprove. Each such applicant shall, upon the filing of his application, pay to the Department of Public Safety a fee of Fifty Dollars (\$50). All such fees shall be paid by the Department into the State Treasury to be deposited in the Operator's and Chauffeur's License Fund. The Department may recognize the American Association of Motor Vehicle Administrators' certificate of equipment approval or in its discretion a certificate from any other recognized testing organization as evidence that the minimum standards prescribed have been satisfied.

(f) When the Department has reason to believe that an approved device as being sold commercially does not comply with the requirements of this Chapter, the Department may, after giving thirty (30) days previous notice to the person holding the certificate of approval for such device in this State, conduct a hearing upon the question of compliance of said approved device. After said hearing the Department shall determine whether said approved device meets the requirements of this Chapter. If said device does not meet the requirements of this Chapter the Department shall give notice to the person holding the certificate of approval for such device in this State. If, at the expiration of ninety (90) days after such notice, the person holding the certificate of approval for such device has failed to satisfy the Department that said approved device as thereafter to be sold meets the requirements of this Chapter, the Department shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this Chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this Chapter. The Department may at the time of the retest purchase in the open market and submit to the testing agency one or

more sets of such approved devices and if such device upon such retest fails to meet the requirements of this Chapter, the Department may refuse to renew the certificate of approval of such device.

(g) Any order or act of the Department under the provisions of this section may be subject to review within ten (10) days' notice thereof by appeal to the District Court at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, and such Court is hereby vested with jurisdiction. The proceeding on appeal shall be a trial de novo as such term is commonly used and intended in an appeal from the Justice Court to the County Court, and the burden of proof shall be on the Department.

#### Selling or Using Lamps or Equipment

Sec. 108A. (a) On and after September 1, 1955, no person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer or semi-trailer, or use upon any such vehicle any head-lamp, auxiliary, or fog-lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or any safety glass, glass coating material, or warning devices and equipment, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the Department of Public Safety and approved by it. The foregoing provisions of this Section shall not apply to equipment in actual use when this Section is adopted, or replacement parts therefor.

(b) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semi-trailer, any lamp or device mentioned in this Section, which has been approved by the Department, unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed. The provisions of this subsection shall not apply, however, to safety glass and glass coating material.

(c) No person shall use upon any motor vehicle, trailer, or semi-trailer, any lamps mentioned in this Section unless said lamps are mounted, adjusted, and aimed in accordance with instructions of the Department of Public Safety.

#### Authority of the Department of Public Safety With Reference to Lighting Devices

Sec. 108B. Repealed by Acts 1971, 62nd Leg., p. 743, ch. 83, § 53, eff. Aug. 30, 1971.

#### When Lighted Lamps are Required—Visibility—Height

Sec. 109. (a) Every vehicle upon a highway within this State at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead shall display lighted

lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and further that stop lights, turn signals and other signaling devices shall be lighted as prescribed for the use of such devices.

(b) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in Subsection (a) of this section in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(c) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

#### Head Lamps on Motor Vehicles

Sec. 110. (a) Every motor vehicle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this Article.

(b) Every head lamp upon every motor vehicle shall be located at a height of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in Subsection (c) of Section 109.

#### Exemptions From Lighting Equipment Requirements

Sec. 110A. (a) The requirements of this Act requiring the installation of fixed electric lights on vehicles do not apply to farm trailers and fertilizer trailers registered as such under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-2, Vernon's Texas Civil Statutes), if they are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead.

(b) Except for Section 118 of this Act, the provisions of this Act requiring the installation of fixed electric lights on vehicles do not apply to boat trailers with a gross weight of less than four thousand, five hundred (4,500) pounds, if they are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead. Boat trailers with a gross weight of not more than three thousand (3,000) pounds are exempt from all provisions of this Act requiring the installation of electric lights on vehicles, including the provisions of Section 118, if they

are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead.

(c) Except for Section 118 of this Act, the provisions of this Act relating to lamps, reflectors, and lighting equipment do not apply to a mobile home if it is moved over the highways only during daytime and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles are not clearly discernible at a distance of one thousand (1,000) feet ahead, and if the mobile home is being moved pursuant to a special permit issued by the State Highway Department under Chapter 41, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701a, Vernon's Texas Civil Statutes). In no event may a mobile home lighted as provided in this section move on the highways other than at daytime.

#### Tail Lamps

Sec. 111. (a) After January 1, 1972, every motor vehicle, trailer, semi-trailer and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two (2) tail lamps mounted on the rear which, when lighted as required in Section 109, shall emit a red light plainly visible from a distance of one thousand (1,000) feet to the rear, except that passenger cars and trucks manufactured or assembled prior to model year 1960 shall have at least one (1) tail lamp. On a combination of vehicles, only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one (1) tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than fifteen (15) inches.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

#### Reflectors

Sec. 112. (a) Every motor vehicle, trailer, semitrailer and pole trailer shall carry on the rear, either as a part of the tail lamps or separately, two (2) or more red reflectors meeting the requirements of this section; provided, however, that vehicles of the types mentioned in Section 114 shall be equipped with reflectors meeting the requirements of Sections 116 and 117.

(b) Every such reflector shall be mounted on the vehicle at a height not less than fifteen (15) inches nor more than sixty (60) inches measured as set forth in Subsection (c) of Section 109, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within six hundred (600) feet to one hundred (100) feet from such vehicle when directly in front of lawful lower beams of head lamps, except that reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be visible at night from all distances within three hundred and fifty (350) feet to one hundred (100) feet when directly in front of lawful upper beams of the head lamps.

#### Application of Succeeding Sections

Sec. 113. Those sections of this Chapter which follow immediately, including Sections 114, 115, 116, 117 and 119, relating to clearance lamps, marker lamps and reflectors, shall apply as stated in said sections to vehicles of the type therein enumerated; namely, buses, trucks, truck tractors, and trailers, semitrailers and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in Section 109.

#### Additional Lighting Equipment Required on Certain Vehicles

Sec. 114. In addition to other equipment required in Sections 110, 111, 112, and 118 of this Act, the following vehicles shall be equipped as herein stated under the conditions stated in Section 113, and in addition, the reflectors elsewhere enumerated for such vehicles shall conform to the requirements of Section 117.

(a) Buses and trucks eighty (80) inches or more in overall width:

1. On the front, two (2) clearance lamps, one (1) at each side.
2. On the rear, two (2) clearance lamps, one (1) at each side.
3. On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.
4. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(b) Trailers and semitrailers eighty (80) inches or more in overall width:

1. On the front, two (2) clearance lamps, one (1) at each side.
2. On the rear, two (2) clearance lamps, one (1) at each side.
3. On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.
4. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(c) Truck tractors:

On the front, two (2) cab clearance lamps, one (1) at each side.

(d) Trailers and semitrailers thirty (30) feet or more in overall length:

On each side, one (1) amber side marker lamp and one (1) amber reflector, centrally located with respect to the length of the vehicle.

(e) Pole trailers:

1. On each side, one (1) amber side marker lamp at or near the front of the load.

2. One (1) amber reflector at or near the front of the load.

3. On the rearmost support for the load, one (1) combination marker lamp showing amber to the front and red to the rear and side, mounted to indicate maximum width of the pole trailer.

Color of Clearance Lamps, Identification Lamps, Side Marker Lamps, Back-up Lamps and Reflectors

Sec. 115. (a) Front clearance lamps, identification lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps, identification lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber.

Mounting of Reflectors, Clearance Lamps, Identification Lamps, and Side Marker Lamps

Sec. 116. (a) Reflectors shall be mounted at a height of not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this Act.

(b) Clearance lamps shall, so far as is practicable, be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. Provided, that when rear identification lamps

are required and are mounted as high as it is practicable, rear clearance lamps may be mounted at optional height and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as near as practicable, the extreme width of the trailer. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

Visibility Requirements for Reflectors, Clearance Lamps, Identification Lamps and Marker Lamps

Sec. 117. (a) Every reflector upon any vehicle referred to in Section 114 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred (600) feet to one hundred (100) feet from the vehicle when directly in front of lawful lower beams of the head lamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be measured in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred (500) and fifty (50) feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred (500) and fifty (50) feet from the side of the vehicle on which mounted.

Stop Lamps and Turn Signals

Sec. 118. (a) After January 1, 1972, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with two (2) or more stop lamps meeting the requirements of Section 124, except that passenger cars manufactured or assembled prior to the model year 1960, shall be equipped with at least one (1) stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in Section 124.

(b) After January 1, 1972, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of Section 124, except that passenger cars and trucks less than eighty (80) inches in width, manufactured or assembled prior to model year 1960, need not be equipped with electric turn signal lamps.

**Obstructed Lights Not Required**

Sec. 119. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

**Lamps or Flags on Projecting Load**

Sec. 120. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 109, two (2) red lamps visible from a distance of at least five hundred (500) feet to the rear, two (2) red reflectors visible at night from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least five hundred (500) feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than four (4) feet beyond its rear, red flags, not less than twelve (12) inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section.

**Lamps on Parked Vehicles**

Sec. 121. (a) Every vehicle shall be equipped with one (1) or more lamps which, when lighted, shall display a white or amber light visible from a distance of one thousand (1,000) feet to the front of the vehicle, and a red light visible from a distance of one thousand (1,000) feet to the rear of the vehicle. The location of said lamp or lamps shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(b) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any persons and vehicles within a distance of one thousand (1,000) feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(c) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand (1,000) feet upon such highway, such vehicle so parked or

stopped shall be equipped with and shall display lamps meeting the requirements of Subsection (a).

(d) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

**Lamps and Reflectors on Farm Tractors, Farm Equipment and Implements of Husbandry and Other Vehicles and Equipment**

Sec. 122. (a) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall be equipped with vehicular hazard warning lights of a type described in Section 125(d), visible from a distance of not less than one thousand (1,000) feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(b) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in Section 109, be equipped with lamps and reflectors as follows:

1. At least two (2) head lamps meeting the requirements of Sections 126, 128 or 129.

2. At least one (1) red lamp visible when lighted from a distance of not less than one thousand (1,000) feet to the rear mounted as far to the left of the center of the vehicle as practicable.

3. At least two (2) red reflectors visible from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps.

(c) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in Section 109 be equipped with lamps and reflectors as follows:

1. The farm tractor shall be equipped as required in Subsections (a) and (b).

2. If the towed unit or its load extends more than four (4) feet to the rear of the tractor or obscures any light thereon, said unit shall be equipped on the rear with at least two (2) red reflectors visible from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps.

3. If the towed unit of such combination extends more than four (4) feet to the left of the centerline of the tractor, said unit shall be equipped on the front with an amber reflector visible from all distances within six hundred (600) feet to one hundred (100) feet to the front when directly in front of lawful lower beams of head lamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.

(d) The two (2) red reflectors required in the foregoing subsection shall be so positioned as to show from the rear, as nearly as practicable, the extreme width of the vehicle or combination carrying them. Provided that all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required by Subsection (c).

(e) Every vehicle including animal-drawn vehicles and vehicles referred to in Section 108(c), not specifically required by the provisions of this article to be equipped with lamps or other lighting devices shall at all times specified in Section 109 of this Act be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand (1,000) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than one thousand (1,000) feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand (1,000) feet to the rear and two red reflectors visible from all distances of six hundred (600) to one hundred (100) feet to the rear when illuminated by the lawful lower beams of head lamps.

#### Spot Lamps and Auxiliary Driving Lamps

Sec. 123. (a) Spot lamps. Any motor vehicle may be equipped with not to exceed two (2) spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(b) Fog lamps. Any motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front at a height of not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five (25) feet ahead project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams as specified in Section 126.

(c) Auxiliary passing lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of Section 126 shall apply to any combination of head lamps and auxiliary passing lamps.

(d) Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height of not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of Section 126 shall ap-

ply to any combination of head lamps and auxiliary driving lamps.

#### Audible and Visual Signals on Vehicles, Signal Lamps and Signal Devices

Sec. 124. (a) Every authorized emergency vehicle may, in addition to any other equipment and distinctive markings required by this Act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every school bus and every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this Act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. A church bus may be equipped with signal lamps of the type authorized for school buses if it has the words "Church Bus" printed on the front and rear of the bus, and the words are clearly discernible to drivers of other vehicles.

(c) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein.

(d) The alternately flashing lighting described in Subsections (b) and (c) of this section shall not be used on any vehicle other than a school bus, a church bus, or an authorized emergency vehicle.

(e) Any vehicle may be equipped and when required under this Act shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than three hundred (300) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one (1) or more other rear lamps.

(f) Any vehicle may be equipped and when required under this Act shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit white or amber light, or any shade of light between white and amber. The lamps showing to the rear shall be mounted on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light, or any shade of color between red and amber. Turn signal lamps on vehicles eighty (80) inches or more in overall width shall be visible from a distance of not less than five hundred (500) feet to the front and rear in normal sunlight. Turn signal

lamps on vehicles less than eighty (80) inches wide shall be visible at a distance of not less than three hundred (300) feet to the front and rear in normal sunlight. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle.

#### Additional Lighting Equipment

Sec. 125. (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with one (1) or more back-up lamps either separately or in combination with other lamps, but any such back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing. After January 1, 1972, every bus, truck, truck tractor, trailer, semitrailer or pole trailer eighty (80) inches or more in overall width or thirty (30) feet or more in overall length shall be equipped with lamps meeting the requirements of this subsection. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred (500) feet in normal sunlight.

(e) Any vehicle eighty (80) inches or more in overall width, if not otherwise required by this Act, may be equipped with not more than three (3) identification lamps showing to the front which shall emit an amber light without glare and not more than three (3) identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in Subsection (f) of Section 114.

#### Multiple-Beam Road Lighting Equipment

Sec. 126. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made

automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least four hundred and fifty (450) feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred and fifty (150) feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1948, which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

#### Use of Multiple-Beam Road Lighting Equipment

Sec. 127. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 109, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in Section 126(b) and Section 139F(f)(2b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle approaches another vehicle from the rear, within three hundred (300) feet, such driver shall use a distribution of light permissible under this Article other than the uppermost distribution of light specified in Sections 126(a) and 139F(f)(2a).

#### Single Beam Road Lighting Equipment

Sec. 128. Head lamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on other motor vehicles manufactured and sold prior to one (1) year after the effective date of this Act in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light

complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

#### Alternate Road Lighting Equipment

Sec. 129. Any motor vehicle may be operated under the conditions specified in Section 109 when equipped with two (2) lighted lamps upon the front thereof capable of revealing persons and vehicles one hundred (100) feet ahead in lieu of lamps required in Section 126 or Section 128, provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles per hour.

#### Number of Driving Lamps Required or Permitted

Sec. 130. (a) At all times specified in Section 109, at least two (2) lighted lamps shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred (300) candlepower, not more than a total of four (4) of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

#### Special Restrictions on Lamps

Sec. 131. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This Section shall not apply to police vehicles or to any vehicle upon which a red light visible from the front is expressly authorized or required by law.

(c) Flashing lights are prohibited except as authorized or required in Sections 122, 124, 125 and 131.

(d) The Department of Public Safety is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of this Article, but supplemental thereto. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the Society of Automotive Engineers.

(e) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

(f) The Texas Highway Department shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal and other highway maintenance and service equipment when operated on the highways of this State in lieu of the lamps otherwise required on motor vehicles by this Article. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal and other highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Association of State Highway Officials.

(g) It shall be unlawful to operate any snow-removal and other highway maintenance and service equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

#### Brakes

Sec. 132. Every motor vehicle, trailer, semi-trailer and pole trailer, and any combination of such vehicles operating upon a highway within this State shall be equipped with brakes in compliance with the requirements of this Article.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved on a highway, shall be equipped with service brakes complying with the performance requirements as required and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles

shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Certain trailers, semitrailers, and pole trailers, which are treated as follows:

a. If the gross weight of the trailer, semitrailer, or pole trailer does not exceed four thousand, five hundred (4,500) pounds, it is not required to have brakes.

b. If the gross weight of the trailer, semitrailer, or pole trailer exceeds four thousand, five hundred (4,500) pounds but does not exceed fifteen thousand (15,000) pounds, and the vehicle is not drawn at a speed in excess of thirty (30) miles per hour, it is not required to have brakes.

c. If the gross weight of the trailer, semitrailer, or pole trailer exceeds four thousand, five hundred (4,500) pounds but does not exceed fifteen thousand (15,000) pounds, and the vehicle is drawn at a speed in excess of thirty (30) miles per hour, it must have brakes acting on both wheels of the rear axle.

d. "Gross weight," as used in this subsection, means the weight of the trailer, semitrailer, or pole trailer plus the weight of the load actually carried.

2. Any vehicle being towed in driveaway or towaway operations, pro-

vided the combination of vehicles is capable of complying with the performance requirements of this Act.

3. Trucks and truck tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two (2) steerable axles, the wheels of one (1) steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of this Act.

4. Special mobile equipment as defined in Subsection (a) above.

5. Any farm trailer or farm semitrailer operated or moved temporarily upon the highways when its gross weight does not exceed ten thousand (10,000) pounds and when the speed of such farm trailer or farm semitrailer does not exceed thirty (30) miles per hour and when the vehicle and its operation meet all other requirements for total or partial exemption from registration fees as set forth in Section 2, Chapter 88, Acts of the 41st Legislature, 2nd Called Session, 1929, as last amended by Chapter 111, Acts of the 55th Legislature, Regular Session, 1957 (Article 6675a-2, Vernon's Texas Civil Statutes). The term "gross weight" as used in this subsection shall mean the combined weight of the trailer or semitrailer and the weight of the load actually carried on the highway.

6. Any farm trailer or farm semitrailer operated or moved temporarily upon the highways solely to transport cotton

a. if the gross weight of the trailer or semitrailer is not more than fifteen thousand (15,000) pounds;

b. if the speed of the trailer or semitrailer is not more than thirty (30) miles per hour; and

c. if the trailer or semitrailer is totally or partially exempt from the regular registration fees under Section 2, Chapter 88, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-2, Vernon's Texas Civil Statutes).

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of three thousand (3,000) pounds, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of a breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two (2) means of emergency brake operation.

1. Air brakes. After January 1, 1972, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1972, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by Subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent if other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After April 1, 1973, every motor vehicle, trailer, semitrailer and pole trail-

er, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. Surge or inertia brake systems may be used on trailers and semitrailers with a gross weight of not more than fifteen thousand (15,000) pounds in satisfaction of the requirements of Subsection (c) of this section. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve.

1. Air brakes. Every bus, truck or truck tractor with air operated brakes shall be equipped with at least one (1) reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty (20%) percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1972, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty (40%) percent.

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices.

1. Air brakes. Every bus, truck or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir

pressure of the vehicle is below fifty (50) percent of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1972, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes.

A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

(k) Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

1. Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification;

2. Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

3. Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one [1] percent grade), dry, smooth, hard surface that is free from loose material.

	1	2	3	4
		Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of 20 m. p. h.
<b>Classification of Vehicles</b>				
A	Passenger vehicles with a seating capacity of 10 people or less including driver, not having a manufacturer's gross vehicle weight rating -----	52.8%	17	25
B	Single unit vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or less -----	43.5%	14	30
C-1	Single unit vehicles with a manufacturer's gross weight rating of more than 10,000 pounds -----	43.5%	14	40

1	2	3	4
Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second	Brake system application and braking distance in feet from an initial speed of 20 m. p. h.
C-2 Combination of a two-axle towing vehicle and a trailer with a weight of 3,000 pounds or less -----	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4 All combinations of vehicles in drive-away-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

(l) Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on the opposite sides of the vehicle.

Horns and Warning Devices

Sec. 133. (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by

the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter event the driver of such vehicle shall sound said siren when necessary to warn pedestrians and other drivers of the approach thereof.

Mufflers, Prevention of Noise

Sec. 134. (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and no person shall use a muffler cut out, bypass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(c) Every new motor vehicle and new motor vehicle engine beginning with the model year 1968 shall at all times be so equipped that crankcase emissions are not discharged into the ambient atmosphere from the vehicle or engine.

(d) The owner or operator of any new motor vehicle or new motor vehicle engine beginning with the model year 1968 equipped with an exhaust emission system shall maintain the exhaust emission system in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated.

The owner or operator of the motor vehicle or motor vehicle engine shall not remove or intentionally make inoperable within the State of Texas the exhaust emission system, or any part thereof, except where the purpose of removal of the exhaust emission system, or part thereof, is to install another exhaust emission system, or part thereof, which is intended to be equally effective in reducing atmospheric emissions from the vehicle or engine.

#### Mirrors

Sec. 134A. On and after January 1, 1972, every motor vehicle, operated singly or when towing any other vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred (200) feet to the rear of such motor vehicle.

#### Windshields Must be Unobstructed and Equipped With Wipers

Sec. 134B. (a) No person shall drive a motor vehicle with any sign, poster or other non-transparent material upon the front windshield, side wings or side or rear windows of such vehicle which materially obstructs, obscures, or impairs the driver's clear view of the highway or any intersecting highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

#### Restrictions as to Tire Equipment

Sec. 135. (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface extending above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semi-trailer having any metal tire in contact with the roadway, provided however this section shall not apply to farm wagons and/or farm trailers having a gross weight less than five thousand (5,000) pounds where owners are in the act of transporting farm products to market or for processing or from farm to farm.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The State Highway Commission and local authorities in their respective jurisdictions

may in their discretion issue a special permit authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Act.

(e)(1) After January 1, 1973, no person may sell or offer for sale regrooved tires. The provisions of this Section shall apply only to private passenger automobile tires.

(2) Any person violating Subdivision (1) of this Subsection is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$500 nor more than \$2,000.

#### Safety Glazing Material in Motor Vehicles

Sec. 136. (a) On and after January 1, 1972, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material of a type approved by the Department of Public Safety wherever glazing material is used in doors, windows and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall not apply to glazing material in compartments not so designed and equipped that persons may ride therein.

(b) The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(c) It shall be unlawful after the first day of January, 1972, for any person to replace or cause to be replaced, any glass in doors, windows or windshields in any motor vehicle, unless such replacement be made with safety glazing materials as defined in this Act.

*[Text of subsection (d) as amended by Acts 1971, 62nd Leg., p. 759, ch. 83, § 79]*

(d) No person shall sell or affix to a motor vehicle any camper manufactured or assembled after January 1, 1972, unless such camper is equipped with safety glazing material of a type approved by the Department of Public Safety, wherever glazing material is used in doors and windows. As used in this section "camper" means any structure designed to be loaded onto, or affixed to, a motor vehicle to provide temporary living quarters for recreation, travel, or other use.

*[Text of subsection (d) as added by Acts 1971, 62nd Leg., p. 3046, ch. 1007]*

(d) No person shall sell imperfect safety glass for doors, windows, or windshields of motor vehicles unless the glass is labelled "second" or "imperfect" or by a similar term in red let-

ters each letter being at least one inch in size which will clearly indicate to the consumer the quality of the glass being sold; the seller of each piece of imperfect glass will notify the consumer verbally of the imperfection and what could possibly result because of said imperfection, and will also deliver in writing at the time of purchase the quality of the glass explaining all imperfections and what could result because of the imperfections.

**Certain Vehicles to Carry Flares or Other Devices**

Sec. 137. (a) No person shall operate any truck, bus or truck tractor, or any motor vehicle towing a house trailer, upon any highway outside an urban district or upon any divided highway at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle the following equipment except as provided in Subsection (b):

1. At least three (3) flares or three (3) red electric lanterns or three (3) portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

No flare, fusee, electric lantern or warning flag shall be used for the purpose of compliance with the requirements of this section unless such equipment has been approved by the Texas Department of Public Safety. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful lower beams of head lamps, and unless it is of a type which has been approved by the Department of Public Safety.

2. At least three (3) red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

(b) No person shall operate at the time and under conditions stated in Subsection (a) any motor vehicle used for the transportation of explosives, or any cargo tank truck used for the transportation of flammable liquids or compressed gases, unless there shall be carried in such vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of Subsection (a) of this section and there shall not be carried in any said vehicle any flares, fusees or signal produced by flame.

**Display of Warning Lights and Devices When Vehicle is Stopped or Disabled**

Sec. 138. (a) Whenever any truck, bus, truck tractor, trailer, semi-trailer or pole trailer eighty (80) inches or more in overall width or thirty (30) feet or more in overall length is stopped upon a roadway or adjacent shoulder,

the driver shall immediately actuate vehicular hazard warning signal lamps meeting the requirements of Section 125. Such lights need not be displayed by a vehicle parked lawfully in an urban district, or stopped lawfully to receive or discharge passengers, or stopped to avoid conflict with other traffic or to comply with the directions of a police officer or an official traffic-control device, or while the devices specified in Subsections (b) to (h) are in place.

(b) Whenever any vehicle of a type referred to in Subsection (a) is disabled, or stopped for more than ten (10) minutes, upon a roadway outside of an urban district at any time when lighted lamps are required, the driver of such vehicle shall display the following warning devices except as provided in Subsection (c):

1. A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall immediately be placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

2. As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three (3) liquid-burning flares (pot torches), or three (3) lighted red electric lanterns, or three (3) portable red emergency reflectors on the roadway in the following order:

(I) One (1), approximately one hundred (100) feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(II) One (1), approximately one hundred (100) feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(III) One (1) at the traffic side of the disabled vehicle not less than ten (10) feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with Paragraph (I) of this subsection, it may be used for this purpose.

(c) Whenever any vehicle referred to in this section is disabled, or stopped for more than ten (10) minutes, within five hundred (500) feet of a curve, hillcrest or other obstruction to view, the warning device in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than one hundred (100) feet nor more than five hundred (500) feet from the disabled vehicle.

(d) Whenever any vehicle of a type referred to in this section is disabled, or stopped for more than ten (10) minutes, upon any roadway of a divided highway during the time lighted lamps are required, the appropriate warning

devices prescribed in Subsections (b) and (e) shall be placed as follows:

One (1) at a distance of approximately two hundred (200) feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;

one (1) at a distance of approximately one hundred (100) feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;

one (1) at the traffic side of the vehicle and approximately ten (10) feet from the vehicle in the direction of the nearest approaching traffic.

(e) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, is disabled, or stopped for more than ten (10) minutes, at any time and place mentioned in Subsections (b), (c), or (d), the driver of such vehicle shall immediately display red electric lanterns or portable red emergency reflectors in the same number and manner specified therein. Flares, fusees or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(f) The warning devices described in Subsections (b) to (e) need not be displayed where there is sufficient light to reveal persons and vehicles within a distance of one thousand (1,000) feet.

(g) Whenever any vehicle described in this section is disabled, or stopped for more than ten (10) minutes, upon a roadway outside of an urban district or upon the roadway of a divided highway at any time when lighted lamps are not required by Section 109, the driver of the vehicle shall display two (2) red flags as follows:

(I) If traffic on the roadway moves in two directions, one (1) flag shall be placed approximately one hundred (100) feet to the rear and one (1) flag approximately one hundred (100) feet in advance of the vehicle in the center of the lane occupied by such vehicle.

(II) Upon a one-way roadway, one (1) flag shall be placed approximately one hundred (100) feet and one (1) flag approximately two hundred (200) feet to the rear of the vehicle in the center of the lane occupied by such vehicle.

(h) When any vehicle described in this section is stopped entirely off the roadway and on an adjacent shoulder at any time and place hereinbefore mentioned, the warning devices shall be placed, as nearly as practicable, on the shoulder near the edge of the roadway.

(i) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of Section 137 applicable thereto.

(j) It shall be unlawful for any person except any peace officer while acting in his official capacity, or the owner of the vehicle or his duly authorized agent or employee, to remove, damage, destroy, misplace, or extinguish any lamp, flare, fusee, or other signaling device required under this section and Section 137 of this Act, while the same are being displayed or being used as required by this Act.

#### Vehicle Transporting Hazardous Materials

Sec. 139. (a) The Director of the Texas Department of Public Safety shall after public hearing adopt such regulations as may be deemed necessary for the safe transportation of hazardous materials. Such regulations shall duplicate or be consistent with current hazardous materials regulations of the United States Department of Transportation. The Director of the Texas Department of Public Safety is hereby authorized to adopt all or any part of said hazardous materials regulations by reference and any such adoption shall be construed to incorporate amendments thereto as may be made from time to time.

(b) Any person operating a vehicle transporting any hazardous materials as a cargo or part of a cargo upon a highway shall at all times comply with regulations of the Director of the Department of Public Safety adopted pursuant to the provisions of this section.

(c) Said vehicle shall be marked or placarded at such places and in such manner as have been prescribed by regulations adopted pursuant to this section.

(d) Every said vehicle shall be equipped with not less than one (1) fire extinguisher with physical characteristics in fire extinguishing ability equivalent to or better than fire extinguishers which qualify under Classification B of the Standards of Underwriters Laboratories, Incorporated, 207 East Ohio Street, Chicago, Illinois 60611, in effect on June 30, 1951.

(e) Any person convicted of violating a regulation adopted pursuant to this section shall be punished by a fine of not more than Two Hundred Dollars (\$200).

Sec. 139a. Repealed by Acts 1971, 62nd Leg., p. 763, ch. 83, § 83, eff. Aug. 30, 1971.

#### Safety Guards or Flaps

Sec. 139A. It shall be unlawful to operate any road tractor, truck, truck tractor in combination with a semitrailer, trailer or semitrailer in combination with a towing vehicle, having four (4) or more tires on the rearmost axle of such vehicle or if in combination the rearmost axle of such combination, upon highways in this State, unless the rearmost axle of such road tractor, truck, truck tractor in combination with a semitrailer, trailer, or semitrailer in combination with a towing vehicle, be equipped with safety guards or flaps of a type of material and construction as prescribed by the Department, located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost vehicle of

such combination, to within eight (8) inches of the surface of the highway. Provided, however, pole trailers, truck tractors operated alone and without being in combination with a semitrailer, and all trucks operated on private property, shall not come under the provisions of this section.

#### Distinctive Emblem Required on Slow-Moving Vehicles

Sec. 139B. Subd. 1. As used in this Section, the term "slow-moving vehicle" means any motor vehicle designed to operate at a maximum speed of twenty-five miles per hour or less; and the term also means and includes all other vehicles, implements of husbandry and other machinery, including all road construction machinery, while being drawn by animals or by a motor vehicle designed to operate at a maximum speed of twenty-five miles per hour or less.

The term "slow-moving-vehicle emblem", as used in this Section, means a triangular emblem, conforming to the size, colors and other standards and specifications as are adopted by the Director of the Department of Public Safety in accordance with this Section.

Subd. 2. The Director of the Department of Public Safety shall adopt standards and specifications as to colors, size and position of mounting for a distinctive triangular emblem having a reflecting surface and designed to be clearly visible, in daylight or at night by reflection from the light of standard automobile headlamps, at a distance of not less than five hundred (500) feet; the standards and specifications for such emblems shall correlate with and, insofar as the Director determines to be practicable, shall conform to the then current standards and specifications adopted or approved by the American Society of Agricultural Engineers for a uniform emblem to identify slow-moving vehicles.

Subd. 3. From and after January 1, 1970, no "slow-moving vehicle," shall be operated or drawn upon any public street or highway in this state unless the same shall be equipped with and unless there shall be displayed at the rear thereof a "slow-moving-vehicle emblem" conforming to the standards and specifications adopted by the Director of the Department of Public Safety as above directed; provided that this requirement shall not apply to any such vehicle when being used in actual construction or maintenance work and while traveling within the limits of a construction area which is marked as such in accordance with requirements of the State Highway Commission. Such emblem shall be mounted base down on the rear of the vehicle, not less than three (3) feet nor more than five (5) feet above the road surface, and shall be maintained in a clean, reflective condition. The requirement of such emblem shall be in addition to any other lighting or reflective devices required by law.

When a motor vehicle displaying a slow-moving-vehicle emblem is drawing or towing an implement of husbandry or other machinery, and the visibility of the emblem on the pulling

unit is not obstructed by the implement or machinery being towed, it shall not be necessary to display a similar emblem on the towed unit.

Subd. 4. The use of the "slow-moving-vehicle emblem" shall be restricted to the slow-moving vehicles specified in Subdivision 1, and its use on any other type of vehicle or stationary object on the highway is prohibited.

#### Air-Conditioning Equipment

Sec. 139C. (a) The term "air-conditioning equipment" as used or referred to in this section shall mean mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(b) Such equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable.

(c) The Department of Public Safety may adopt and enforce safety requirements, regulations and specifications consistent with the requirements of this section applicable to such equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the Society of Automotive Engineers.

(d) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any such equipment unless it complies with the requirements of this section.

(e) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless said equipment complies with the requirements of this section.

#### Television Receivers

Sec. 139D. (a) No motor vehicle operated on the highways of this State shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat; provided, however, it shall be lawful for a motor vehicle specially designed as a mobile unit used in connection with a licensed television station to have television type receiving equipment so located that the viewer or screen is visible from the driver's side but said receiver shall never be used unless said motor vehicle is stopped.

(b) This section does not prohibit the use of television type receiving equipment used exclusively for safety or law enforcement purposes provided each such installation is approved by the Department of Public Safety, or installations in remote television transmission trucks.

#### Seat Belts

Sec. 139E. Every motor vehicle required by Article XV, 6701d, Uniform Act, to be inspected shall be equipped with front seat belts where seat belt anchorages were part of the manufacturer's original equipment on the vehicle.

## Equipment on Motorcycles and Motor-Driven Cycles

## Sec. 139F. (a) Head Lamps

1. Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this Article.

2. Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in Section 109(c).

## (b) Tail Lamps

1. Every motorcycle and motor-driven cycle shall have at least one (1) tail lamp which shall be located at a height of not more than seventy-two (72) nor less than twenty (20) inches.

2. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

## (c) Reflectors

1. Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the tail lamp or separately, at least one (1) red reflector meeting the requirements of Section 112(b).

## (d) Stop Lamps

1. Every motorcycle and motor-driven cycle shall be equipped with at least one (1) stop lamp meeting the requirements of Section 124(e).

## (e) Lamps on Parked Vehicles

1. Every motorcycle must comply with the provisions of Section 121 regarding lamps on parked vehicles and the use thereof.

2. Motor-driven cycles need not be equipped with parking lamps nor otherwise comply with the provisions of Section 121.

## (f) Multiple-beam Road-lighting Equipment

1. Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

2. Such equipment shall:

a. Reveal persons and vehicles at a distance of at least three hundred (300) feet ahead when the uppermost distribution of light is selected;

b. Reveal persons and vehicles at a distance of at least one hundred fifty (150) feet ahead when the lowermost distribution of light is selected, and

on a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(g) Lighting Equipment for Motor-driven Cycles. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

1. Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal persons and vehicles at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour, and at a distance of not less than three hundred (300) feet when the motor-driven cycle is operated at a speed of thirty-five (35) or more miles per hour.

2. In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps, such equipment shall comply with the requirements of subsection (f) of said section.

3. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(h) Brake Equipment Required. Every motorcycle and motor-driven cycle must comply with the provisions of Section 132, except that:

1. Motorcycles and motor-driven cycles need not be equipped with parking brakes.

2. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of this article.

(i) Performance Ability of Brakes. Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

1. Developing a braking force that is not less than 43.5% of its gross weight;

2. Decelerating to a stop from not more than twenty (20) miles per hour at not less than fourteen (14) feet per second; and

3. Stopping from a speed of twenty (20) miles per hour in not more than thirty (30) feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent grade), dry, smooth, hard surface that is free from loose material.

(j) Brakes on Motor-driven Cycles

1. The Director is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove any such braking system on a vehicle which he finds will not comply with the performance ability standard set forth in Subsection (i), or which in his opinion is equipped with a braking system that is not so designed or constructed as to insure reasonable and reliable performance in actual use.

2. The State Highway Department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it determines that the braking system thereon does not comply with the provisions of this section.

3. No person shall operate on any highway any vehicle referred to in this section in the event the Director has disapproved the braking system upon such vehicle.

(k) Other Equipment. Every motorcycle and every motor-driven cycle shall comply with the requirements and limitations of Section 133 on horns and warning devices, Section 134 on mufflers and prevention of noise, and Section 134A on mirrors.

## ARTICLE XV—INSPECTION OF VEHICLES

### Compulsory Inspection

Sec. 140. (a) It shall be the duty of the Texas Department of Public Safety to require every owner of a motor vehicle, trailer, semi-trailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, to have the tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the gross weight of such vehicles and the load carried thereon is four thousand (4,000) pounds or less. Only the tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspect-

ed as a prerequisite for the issuance of an inspection certificate.

(b) If such inspection discloses the necessity for adjustments, corrections, or repairs, only the tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system shall be adjusted, corrected, or repaired before a certificate is issued as hereinafter provided. The owner may have such adjustments, corrections, or repairs made by such qualified person or persons as he may choose, subject to reinspection as hereinafter provided.

(c) Official inspection stations appointed and supervised by the State of Texas shall make all inspections pursuant to the provisions of this Section, except as provided in subdivision (d) hereof. The Department shall cause one (1) inspection to be made in the year commencing with the effective date of this Act, and annually thereafter. If the motor vehicle, trailer, semi-trailer, pole trailer or mobile home, registered in this State, is damaged to the apparent extent that it would require repair before passing state inspection, the investigating officer shall remove the inspection certificate from the vehicle windshield and shall give the operator of the vehicle a dated receipt. Within thirty (30) days of the date indicated on the receipt, the vehicle shall be reinspected. The periods of inspection shall be fixed by the Department, provided, however, that at no time shall a certificate of inspection or a receipt for a certificate of inspection be required or demanded as a condition precedent to securing a license plate for any motor vehicle, regardless of any period or periods of inspection as may be fixed by the Department. The Department shall have power to make rules and regulations, not inconsistent with law, with respect to the periods of inspection.

(d) The Department may, in its discretion, permit inspection as herein provided to be made by State inspectors under such terms and conditions as the Department may prescribe. Provided, however, the Department may authorize the acceptance in this State of a certificate of inspection and approval issued in another state having a similar inspection law and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this State during the time an inspection was required.

(e) After the period designated for the inspection, no person shall operate on the highways of this State any motor vehicle registered in this State unless a valid certificate of inspection is displayed thereon as required by this Section and any inspector or patrolman of the Department of Public Safety, or any sheriff or deputy sheriff, or any City policeman who shall exhibit his badge or other signs of authority, may stop any motor vehicle not dis-

playing this inspection certificate on the windshield and require the owner or operator to produce an official inspection certificate for the Motor Vehicle being operated.

(f) Any person operating a motor vehicle on the highways of this State, other than a motor vehicle licensed in another State and being temporarily and legally operated under a valid reciprocity agreement, in violation of the provisions of this Act, or without displaying an inspection certificate shall be guilty of a misdemeanor, and shall upon conviction be punished as provided in Section 143.

[Text of subsec. (f) added by Acts 1973, 63rd Leg., p. 1680, ch. 607, § 8, without reference to subsec. (f), ante]

(f) All motor-assisted bicycles shall be subject to annual inspection in the same manner as are motorcycles, except (1) the fee for inspection shall be One Dollar (\$1), fifty cents (50¢) of which shall be paid to the Department to be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law, and (2) the only items of equipment required to be inspected are the brakes, headlamps, and reflectors, which are required to comply with the standards prescribed in Section 184 of this Act. The Department shall promulgate rules and regulations relating to the inspection of motor-assisted bicycles and the issuance and display of inspection certificates with respect to those vehicles.

(g) The Department may appoint and remove such patrolmen, assistants, inspectors and employees as it may deem necessary to carry out the provisions of this Section, prescribe their powers and duties, and fix their compensation within the amounts made available by appropriation.

(h) The provisions of this Act shall not apply to the vehicles referred to in Subsection (a) of this Section when moving under or bearing current "Factory-Delivery License Plates" or current "In-transit License Plates." Nor shall the provisions of this Act apply to farm machinery, road-building equipment, and all other vehicles required to have a slow-moving-vehicle emblem under Section 139(b) of this Act.

#### State Appointed Inspection Stations

Sec. 141. (a) The Department may establish state-appointed inspection stations to carry out the provisions of this Section. Such stations may be located anywhere in the state, and should any be established or appointed, there shall be at least one (1) for each county. The Department is authorized to furnish instructions to, and to supervise official inspection stations and mechanics for inspection of motor vehicles, trailers, semitrailers, pole trailers, and mobile homes for the proper and safe performance of tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehi-

cle, steering (including power steering), wheels and rims, exhaust systems, and exhaust emission systems. The certification of persons to inspect vehicles shall be in accordance with the rules and regulations promulgated by the Department. Every person desiring to operate as an official inspection station shall file an application for a certificate of appointment with the Department.

The application shall be made upon a form prescribed and furnished by the Department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the Department may require. If the applicant has or intends to have more than one place of business within the state, a separate application shall be made for each place of business.

If the applicant is an association, the application shall set forth the names and the addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the Department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

Only such locations which fulfill the Department's requirements and whose owners or proprietors comply with Department regulations shall qualify and be appointed and issued a certificate. Upon approval of an application, the Department shall issue to the owner a certificate of appointment as an official inspection station for the place of business within the state set forth in the application.

Certificates of appointment shall not be assignable, and shall be valid for the owners in whose names issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which issued.

Upon being advised that an application will be approved, the applicant shall provide the bond hereinafter required and a fee of Ten Dollars (\$10) which shall constitute the certificate fee until August 31st of the odd-numbered year following the date of appointment. Thereafter, appointments shall be made for two-year periods and the certificate fee for each such period shall be Ten Dollars (\$10). All certificate fees shall be placed in a fund in the State Treasury to be known as the Motor Vehicle Inspection Fund and shall be used by the Department in the administration of this Act.

(b) Every owner of an official inspection station shall be required to furnish a bond payable to the State of Texas in the amount of One Thousand Dollars (\$1,000), to be approved by the Director of the Department, with two or

more good and solvent sureties, or one corporate surety qualified by law to make such bond, to indemnify the state against the violation of any of the terms and conditions of this Act. Except where the surety is a corporate surety as herein provided, the bond shall first be submitted to the county judge of the county in which the inspection station is located, who shall make his recommendation to the Director whether the bond be approved or disapproved. Any inspector or any official or employee of any inspection station who shall issue an official certificate of inspection without having made an inspection of the vehicle for which it is issued or who shall knowingly or willfully issue an official inspection certificate for a motor vehicle or vehicles, the tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system of which are not at the time of such issuance in a good condition and in conformity with the laws of this state shall forfeit said bond to the State of Texas.

(c) Any owner of an official inspection station who by himself, agent, servant, or employee, violates any provision of this Section or requires the repair of any mechanism or equipment other than that set forth in the uniform standards of safety and items to be inspected as established, shall upon conviction, be punished by a fine not exceeding Two Hundred Dollars (\$200). The Department may for cause, upon notice of an administrative hearing, cancel or suspend the certificate of any inspection station or cancel or suspend the certificate of any person to inspect vehicles and the decision of the Department in respect to the cancellation or suspension of the station license or the cancellation or suspension of the certificate of any person to inspect vehicles, or the refusal to reissue a license to any official inspection station or the refusal to reissue the certificate for any person to inspect vehicles shall be subject to review as provided herein. Any aggrieved party may appeal from the decision of said administrative hearing. The proceedings on appeal shall be a trial de novo, as such term is commonly used and intended in an appeal from the justice court to the county court, and which appeal shall be taken in any district court of the county in which the inspection station is located. At such trial the burden of proof shall always be on the Department and never shifts to the aggrieved party.

(d) The fee for compulsory inspection to be made under this Section shall be Two Dollars (\$2.00). Fifty cents (50¢) of each fee shall be paid to the Department and shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law. The Department may require each official inspection station to make an advance payment of fifty cents (50¢) for each inspection certificate furnished to it, and

the money so received shall be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of fifty cents (50¢) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department.

If an inspection disclosed the necessity for adjustments, corrections, or repairs to tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system, such motor vehicle shall be reinspected free of charge after the adjustments, corrections, or repairs have been made. Any such motor vehicle under the terms of this Act, if involved in an accident subsequent to the required inspection, shall return to an inspection station after adequate repairs are made for a second and reinspection procedure.

(e) No certificate of inspection shall be issued by any inspector or inspection station until the tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust system, and exhaust emission system have been inspected and found to be in proper and safe condition and to comply with the laws of this state. A tire may not be found in proper and safe condition unless it is free of fabric breaks and has at least one-sixteenth of an inch of tread at two distinct points. No person shall make, issue, or knowingly use an imitation or counterfeit of an official inspection certificate.

No person shall display or cause or permit to be displayed any inspection certificate knowing the same to be fictitious or issued for another vehicle or issued without the required inspection having been made.

No person shall perform an inspection or issue an inspection certificate without such person first having been certified to do so by the Department.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, pole trailer, mobile home, or combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

(f) The Department may appoint as official inspection stations, for the limited purpose of inspecting vehicles owned by political subdivi-

sions and agencies of the state, vehicle maintenance facilities owned and operated by the political subdivisions or agencies. The political subdivisions and agencies may not be required to pay the vehicle-inspection fee provided for in Subsection (d) of this section, but shall pay to the Department an advance payment of fifty cents (50¢) for each inspection certificate issued to it. The funds received by the Department shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this Act. Inspection stations appointed under this subsection must satisfy all requirements set forth in Sections 140, 141, and 142 of this Act except the provisions relating to the fee and bond contained in Subsections (a) and (b) of this section. No officer, employee, or inspector of any political subdivision or agency shall place or cause to be placed any inspection certificate received from the Department under the provisions of this subsection on any vehicle other than a vehicle owned by the political subdivision or agency.

#### Standards of Safety; Certificates of Inspection

Sec. 142. (a) The Department may establish uniform standards of safety as prescribed in Article XIV of this Act wherever applicable with respect to tires, brakes, lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering (including power steering), wheels and rims, exhaust systems, and exhaust emission systems. A tire may not be found in proper and safe condition unless it is free of fabric breaks or if it has, in at least two distinct points, one-sixteenth of an inch of tread or less. Such standards of safety shall be posted in every official inspection station. Every motor vehicle inspected shall be required to conform in all respects to the standards of safety established pursuant to this Section.

(b) The Department shall furnish serially numbered certificates of inspection to inspection stations. Each certificate, when issued, shall bear such information as required by the Department for the type of vehicle that was inspected. The certificate shall be invalid after the end of the twelfth month in which the vehicle was last inspected, approved, and the certificate of inspection issued. A certificate of inspection and approval for any vehicle shall be attached to or produced for such vehicle as the Department shall require. The Department shall require that certificates for motorcycles be attached to the rear of the vehicle near the license plate. A record and report as prescribed by the Department shall be made of every inspection and every certificate so issued. No unused certificates of inspection representing a prior inspection period shall be issued after the beginning of the next ensuing period. The effective date shall be January 1, 1974.

## ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

### Penalties for Misdemeanors

Sec. 143. (a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor or for a violation of any of the provisions of this Act for which another penalty is not provided shall be punished by a fine of not less than One (\$1.00) Dollar nor more than Two Hundred (\$200.00) Dollars.

### Disposition of Fines and Forfeitures

Sec. 144. Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

## ARTICLE XVII—PARTIES, PROCEDURE UPON ARREST, AND REPORTS IN CRIMINAL CASES

### Parties to a Crime

Sec. 145. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this Act is likewise guilty of such offense.

### Offense by Persons Owning or Controlling Vehicles

Sec. 146. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

### Person Arrested Must be Taken Immediately Before a Magistrate

Sec. 147. Whenever any person is arrested for any violation of this Act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested demands an immediate appearance before a magistrate;
2. When the person is arrested upon a charge of negligent homicide;

3. When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

4. When the person is arrested upon a charge of failure to stop in the event of an accident, causing death, personal injuries, or damage to property;

5. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

**Notice to Appear in Court; Promise to Appear**

Sec. 148. (a) Whenever a person is arrested for any violation of this Act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court. Provided, however, that the offense of speeding shall be the only offense making mandatory the issuance of a written notice to appear in court, and only then if the arrested person gives his written promise to appear in court, by signing in duplicate the written notice prepared by the arresting officer; and provided further, that it shall not be mandatory for an officer to give a written notice to appear in court to any person arrested for the offense of speeding when such person is operating a vehicle licensed in a state or country other than the State of Texas or who is a resident of a state or country other than the State of Texas.

(b) The time specified in said notice to appear must be at least ten (10) days after such arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified in said notice to appear must be before a magistrate within the city or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release as provided in this section, must give his written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer. The original of said notice shall be retained by said officer and the copy thereof delivered to the person arrested. Thereupon, said officer shall forthwith release the person arrested, from custody.

(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office.

**Violation of Promise to Appear**

Sec. 149. (a) Any person wilfully violating his written promise to appear in court, given as provided in this Article, is guilty of a mis-

demeanor regardless of the disposition of the charge upon which he was originally arrested.

(b) A written promise to appear in court may be complied with by an appearance by counsel.

**Procedure Prescribed Herein Not Exclusive**

Sec. 150. The foregoing provisions of this Article shall govern all police officers in making arrests without a warrant for violations of this Act, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

**Conviction for Traffic Violation Not to Affect Credibility of Witness**

Sec. 151. The conviction of a person upon a charge of violating any provision of this Act or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

**Convictions to be Reported to Department**

Sec. 152. (a) Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Act or of any other law regulating the operation of vehicles on highways.

(b) Within ten (10) days after conviction of forfeiture of bail of a person upon a charge of violating any provision of this Act or other law regulating the operation of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

(c) Said abstract must be made upon a form furnished by the Department and shall include the name and address of the party charged, the number, if any, of his operator's, commercial operator's, or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

(d) Every court of record shall also forward a like report to the department upon the conviction of any person of negligent homicide or any felony in the commission of which a vehicle was used.

(e) The failure, refusal, or neglect of any such judicial officer to comply with any of the requirements of this Section shall constitute misconduct in office and shall be grounds for removal therefrom.

(f) The department shall keep all abstracts received hereunder at its main office.

## Arrest Without Warrant

Sec. 153. Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act.

## ARTICLE XVIII-EFFECT OF AND SHORT TITLE OF ACT

## Short Title

Sec. 154. This Act may be cited as the Uniform Act Regulating Traffic on Highways.

## Constitutionality

Sec. 155. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

## Repeal of Inconsistent Laws

Sec. 156. All laws or parts of laws inconsistent or conflicting with the provision of this Act are hereby repealed, provided, however, that nothing in this Act is intended to repeal provisions of Section 1 of Chapter 88, of the Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Chapter 23, Acts of the Forty-first Legislature, Fifth Called Session, 1930, and Chapter 110, Acts of the Forty-seventh Legislature, Regular Session, 1941,<sup>1</sup> or House Bill No. 407, Page 602, Volume 1, Acts of the Forty-sixth Legislature, Regular Session, 1939, as amended by Chapter 187, Acts of the Forty-seventh Legislature, Regular Session, 1941.<sup>2</sup>

If there be a conflict between any of the provisions of this Act and the orders, rules, regulations, and requirements of the Interstate Commerce Commission or the Railroad Commission of Texas, relating to the equipping, and other safety requirements of vehicles, motor vehicles, truck tractors, trucks, busses, trailers, semi-trailers, or pole-trailers, compliance by the owner or operator of such vehicles with such orders, rules, and regulations of the Interstate Commerce Commission or the Railroad Commission of Texas shall be deemed a compliance with this Act; except that any requirements of this Act in addition to, but not in conflict with, the requirements of the Interstate Commerce Commission or the Railroad Commission shall be complied with.

<sup>1</sup> Article 6675a-1.

<sup>2</sup> Article 6687-1.

## Traffic Signals or Signs in Cities or Towns With Less Than 2,500 Population

Sec. 158. No incorporated city or town with a population of less than two thousand, five hundred (2,500) according to the last preceding Federal Census shall enact any ordinance for the erection or operation of any traffic signal or sign on any State Highway the cost of which has been paid, either in whole or in part,

by the State of Texas, in any such city or town without prior approval thereof by the State Highway Department. Such city or town shall make written application to the State Highway Department for approval of such installation and operation, and upon the filing of any such application, the State Highway Department shall designate an employee to investigate such application, and within ninety (90) days thereafter, said Department shall grant or refuse such application. In granting any such application, the Highway Department may prescribe the conditions under which the signals or signs may be erected and operated, their location, size, shape, height, color, wording, timing, spacing, and all other aspects of such signals or signs, provided that the Highway Department shall consider not only the convenience of the traveling public in raising speed limits in noncongested areas, but also the proper control of traffic for the protection of the lives of school children and other inhabitants of small communities where there are areas of congestion and cross traffic.

## Arrest for Non-Compliance With Unauthorized Signal or Sign

Sec. 159. If any officer shall arrest or attempt to arrest or stop the driver of any vehicle for failing to comply with any unauthorized traffic signal or sign, knowing that such signal or sign has not been authorized, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500).

## Injunction Against Unauthorized Signals or Signs

Sec. 160. If any such incorporated city or town shall erect or maintain any traffic signal or sign without having been duly authorized as provided herein, a suit to enjoin erection and maintenance of such signal or sign shall be prosecuted by the County or District Attorney of the county in which it is located, and if such attorneys shall fail to institute any such suit within fifteen (15) days after receipt of request therefor from any citizen of the State of Texas, then any citizen of the State may institute and prosecute same.

## Speed Limits in Cities or Towns With Less Than 2,500 Population; Fixing

Sec. 161. The State Highway Department may, upon its own initiative, or upon the application of any city or town or any citizen of the State of Texas, fix the speed limits on such State Highways within the limits of any incorporated city or town of less than two thousand, five hundred (2,500) population according to the last preceding Federal Census, higher or lower than the prima facie speed limits now otherwise established by law, in the same manner as provided in Section 158 hereof, provided that fixing of such speed limits shall be done in accordance with the provisions of Chapter 346 of the Acts of the Fifty-second Legislature, 1951, except where inconsistent herewith.

## Arrest for Speed Permitted by Department

Sec. 162. If any officer shall arrest, or attempt to arrest, the operator of any motor vehicle for traveling at a rate of speed permitted by the State Highway Department on any State Highway within the limits of any such incorporated city or town, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500).

## Ordering Removal or Alteration of Traffic Signal or Sign

Sec. 163. The State Highway Department may, upon its own initiative, or upon the application of any incorporated city or town or any citizen of the State of Texas, order the removal or alteration of any traffic signal or sign erected prior to the passage of this Act.

## Counties to Which Preceding Sections Applicable

Sec. 164. The provisions of the preceding Sections 158, 159, 160, 161, 162, and 163 of this Act shall not apply to cities and towns in counties of less than two hundred and fifty thousand (250,000) population according to the last Federal Census.

## Preceding Sections Applicable Only to State Highways

Sec. 165. Nothing in this Act shall be construed to take away from any incorporated city, its authority and jurisdiction over its streets except to the extent provided herein in connection with State Highways only, the cost of which has been paid in whole or in part by the State.

ARTICLE XIX—SPEED RESTRICTIONS  
[1963 ENACTMENT]

## Maximum Speeds of Vehicles

Sec. 166. (a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances then existing. Except when a special hazard exists that requires lower speeds for compliance with paragraph (b) of this Section, the limits specified in this Section or established as hereinafter authorized shall be lawful, but any speed in excess of the limits specified in this Section or established as hereinafter authorized shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

1. Thirty (30) miles per hour in any urban district;

2. Seventy (70) miles per hour during the daytime and sixty-five (65) miles per hour during the nighttime for any passenger car, motorcycle, or motor-driven cycle on any State or Federal numbered highway outside any urban district, including farm- and/or ranch-to-market roads, and sixty (60) miles per hour during the daytime and fifty-five (55) miles per hour during the nighttime for any passenger car, motorcycle, or motor-driven cycle on

all other highways outside any urban district;

3. Sixty (60) miles per hour for all other vehicles on any highway outside any urban district;

4. The speed limits for any bus or other vehicle engaged in this State in the business of transporting passengers for compensation or hire, for any commercial vehicle which is in authorized use as a "Highway Post Office" vehicle furnishing Highway Post Office service in the transportation of the United States mail, and for any light truck, as described in Subdivision 5 of this subsection, shall be the same as prescribed for passenger cars at the same location.

5. The above limitations notwithstanding, the following prima facie maximum limits are declared, for any highway outside any urban district;

a. Forty-five (45) miles per hour for any vehicle towing any house trailer of actual or registered gross weight exceeding four thousand, five hundred (4,500) pounds or with an over-all length exceeding thirty-two (32) feet, excluding the tow bar.

b. Sixty (60) miles per hour in daytime and fifty-five (55) miles per hour during nighttime for any truck, except light trucks as described in this Subdivision 5, truck tractor, trailer or semitrailer, or for any vehicle towing any trailer, semitrailer, another motor vehicle, or any house trailer of actual or registered gross weight, less than four thousand, five hundred (4,500) pounds and over-all length of thirty-two (32) feet or less, excluding the tow bar.

c. Fifty (50) miles per hour for any school bus.

"Daytime" means from one-half ( $\frac{1}{2}$ ) hour before sunrise to one-half ( $\frac{1}{2}$ ) hour after sunset, and "nighttime" means at any other hour.

"Urban District" means the territory contiguous to and including any highway or street which is built up with structures devoted to business, industry or dwelling houses, situated at intervals of less than one hundred (100) feet for a distance of one-quarter ( $\frac{1}{4}$ ) of a mile or more on either side.

"Passenger car" means every motor vehicle, except motorcycles and motor-driven cycles, designed for carrying ten (10) passengers or less and used for the transportation of persons.

"Light truck" means any truck, as defined in this Act, with a manufacturer's rated carrying capacity not to exceed two thousand (2,000) pounds and is intended to include those trucks commonly known as pick-up trucks,

panel delivery trucks and carry-all trucks.

The maximum speed limits set forth in this Section may be altered as authorized in Sections 167, 168 and 169.

(b) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(c) The driver of every vehicle shall, consistent with the requirements of paragraph (b), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

Authority of State Highway Commission to Alter  
Maximum Speed Limits

Sec. 167. (a) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any prima facie maximum speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the highway system, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon, said State Highway Commission may determine and declare a reasonable and safe prima facie maximum speed limit thereat or thereon, and another reasonable and safe speed when conditions caused by wet or inclement weather require it, by proper order of the Commission entered on its minutes, which limits, when appropriate signs giving notice thereof are erected, shall be effective at such intersection or other place or part of the highway system at all times or during hours of daylight or darkness, or at such other times as may be determined; provided, however, that said State Highway Commission shall not have the authority to modify or alter the rules established in Paragraph (b) of Section 166, nor to establish a speed limit higher than seventy (70) miles per hour; and provided further that the speed limits for vehicles described in Paragraphs a, b, and c of Subdivision 5 of Subsection (a) of Section 166 shall not be increased.

By wet or inclement weather is meant conditions of the pavement or roadway caused by precipitation, water, ice or snow which make driving thereon unsafe and hazardous.

(b) The authority of the State Highway Commission to alter maximum speed limits shall exist with respect to any part of any

highway, road or street officially designated or marked by the State Highway Commission as part of the State Highway System. Also, this authority shall exist both within and without the limits of an incorporated city, town or village, including Home Rule Cities, with respect to highways declared to be limited-access or controlled-access highways as defined by this Act.

(c) The State Highway Commission shall, in conducting the engineering and traffic investigation specified in paragraph (a) of Section 167, follow its "Procedure for Establishing Speed Zones" which is in use on the effective date of this Act and as same may be subsequently revised for reasons of technological advancements in traffic operation, design and construction of highways and motor vehicles, as well as the safety of the motoring public.

Authority of Texas Turnpike Authority to alter Maximum Prima Facie Speed Limits on  
Turnpike Projects

Sec. 168. (a) Whenever the Texas Turnpike Authority shall determine upon the basis of an engineering and traffic investigation that any maximum prima facie speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a turnpike constructed and maintained by it, taking into consideration the width and condition of the pavement and other circumstances on such portion of said turnpike as well as the usual traffic thereon, the Legislature hereby directs the Texas Turnpike Authority to determine and declare a reasonable and safe maximum prima facie speed limit thereat or thereon, by proper order of the Authority entered on its minutes, for all vehicles or for any class or classes of vehicles hereinabove established, which limit, when appropriate signs giving notice thereof are erected, shall be effective at such intersections or other places or part of the highway at all times or during hours of daylight or darkness, or at such other times as may be determined.

(b) The authority of the Texas Turnpike Authority to alter maximum prima facie speed limits shall be effective upon any part of any turnpike project constructed and maintained by it pursuant to House Bill No. 4, Chapter 410, Acts of 1953, Fifty-third Legislature, Regular Session, codified as Article 6674v, Vernon's Revised Civil Statutes of Texas, as same may be amended, both within and without the corporate limits of any incorporated city, town or village, including Home Rule Cities. Such authority shall be exclusive with respect to any such project, and the authorities prescribed in Sections 167 and 169 shall not apply upon any part of any such turnpike project; provided, however, that should any turnpike constructed by the Texas Turnpike Authority ever become a part of the designated State Highway System, the State Highway Commission shall then have the sole authority to alter maximum prima facie speed limits thereon as prescribed in

Section 167. The Texas Turnpike Authority shall not have the authority to alter the basic rule established in paragraph (a) of Section 166 nor to establish a speed limit higher than seventy (70) miles per hour.

(c) The Texas Turnpike Authority shall, in conducting the engineering and traffic investigations specified in paragraph (a) of Section 168, following the "Procedure for Establishing Speed Zones" prepared by the Texas Highway Department which is in use on the effective date of this Act and as same may be subsequently revised for reasons of technological advancements in traffic operation, design and construction of highways and motor vehicles, as well as the safety of the motoring public.

**Authority of County Commissioners Court and Governing Bodies of Incorporated Cities, Towns and Villages to Alter Maximum Prima Facie Speed Limits**

Sec. 169. (a) The County Commissioners Court of any county with respect to county highways or roads outside the limits of the right-of-way of any officially designated or marked highway, road or street of the State Highway System and outside the limits of any incorporated city, town or village shall have the same authority by order of the County Commissioners Court entered upon its records to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road or street of the State Highway System; provided that under no circumstances shall any County Commissioners Court have the authority to modify or alter the basic rule established in paragraph (a) of Section 166 nor to establish a speed limit higher than sixty (60) miles per hour.

(b) The governing body of an incorporated city, town or village with respect to any highway, street or part of a highway or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority by city ordinance to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road or street of the State Highway System; provided that under no circumstances shall any such governing body have the authority to modify or alter the basic rule established in paragraph (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and provided, further, that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 shall supersede any city ordinance in conflict therewith.

**Special Speed Limitations**

Sec. 169A. (a) No person shall operate any motor-driven cycle at any time mentioned in

Subsection (a) of Section 109 at a speed greater than thirty-five (35) miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred (300) feet ahead.

(b) No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten (10) miles per hour.

(c) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(d) The State Highway Commission upon State highways, the Texas Turnpike Authority upon any part of a turnpike constructed and maintained by it, and local authorities on highways under their jurisdiction, may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this Act, the Commission, Texas Turnpike Authority, or local authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

**Temporary Speed Limits**

*[Text of section effective until April 1, 1975]*

Sec. 169B. (a) If the State Highway Commission finds that the facts specified in Subsection (b) of this section exist, it may enter an order establishing maximum prima facie speed limits of not more than seventy (70) miles per hour applicable to all highways in this state, including highways under the control of the Texas Turnpike Authority, incorporated cities and towns, and counties. An order entered under this section does not have the effect of increasing a speed limit on any highway. The limits established under this section are prima facie prudent and reasonable speed limits enforceable in the same manner as prima facie limits established under other provisions of this article. When speed limits established under this section are in effect, they prevail over any other established speed limit which would permit a person to operate a motor vehicle at a higher rate of speed, but do not apply to vehicles permitted to exceed established limits under Sections 24 and 172 of this Act.

(b) An order issued under Subsection (a) of this section is justified if the commission finds the following facts exist, which must be stated in the order:

- (1) That a severe shortage of motor fuel or other petroleum product exists; and

(2) That the shortage was caused by war, national emergency or other circumstances; and

(3) That a reduction of speed limits will serve to foster conservation purposes and safety; or

(4) The failure to alter state speed limits will prevent the state from receiving revenue for highway purposes from the federal government.

(c) Unless a specific speed limit is required by federal law or directive under threat of loss of federal highway funds then the State Highway Commission may not set maximum prima facie speed limits under this section of all vehicles below sixty (60) miles per hour.

(d) Before the commission may enter an order establishing a maximum prima facie speed limit, it must hold a public hearing preceded by the publication in at least three newspapers of general circulation in the state of a notice of the date, time, and place of the hearing and of the action proposed to be taken. The notice must be published at least 12 days before the date of the hearing. At the hearing, all interested persons may present oral or written testimony regarding the proposed order.

(e) When the commission enters an order under this section, it shall file the order in the office of the governor. The governor shall then undertake an independent finding of fact and determine the existence of the facts in Subdivisions (1), (2), (3) or (4) of Subsection (b) of this section. Before the eighth day after the order is filed in his office, the governor shall conclude his finding of fact, issue a proclamation stating whether the necessary facts exist to support the issuance of the commission's order, and file copies of the order and his proclamation in the office of the secretary of state.

(f) If the governor's proclamation states that the facts necessary to support the issuance of the commission's order exist, the order takes effect according to Subsection (g) of this section. Otherwise, the order has no effect.

(g) In an order issued under this section, the commission may specify the date on which the order takes effect, but that date may not be sooner than the eighth day after the order is filed with the governor. If the order contains no effective date, it takes effect on the 21st day after it is filed with the governor. Unless the order by its own terms expires earlier, it remains in effect until a subsequent order adopted by the procedure prescribed by this section amends or repeals it, except that any order adopted under this section expires when this section expires. The procedure for repealing an order is the same as for adopting an order except that the commission and the governor must find that the facts required to support the issuance of an order under Subsection (b) of this section no longer exist.

(h) When an order is adopted in accordance with this section, the commission and all gov-

ernmental authorities responsible for the maintenance of highway speed limit signs shall proceed with appropriate action to conceal or remove all signs which give notice of a speed limit higher than the one contained in the order and to erect appropriate signs. All governmental entities having responsibility for administration of traffic safety programs and the enforcement of traffic laws shall also proceed to use all available resources to notify the public of the effect of the order, and to accomplish this purpose they are directed to seek to enlist the cooperation of all news media in the state.

(i) Any change in speed limits under this section shall be effective for a maximum of 120 days, unless the commission makes a finding prior to the expiration of the 120 day period that the conditions specified under Section 169B, Subsection (b) continue to exist. If such conditions are found to still exist such limits may be continued in effect for additional 120 day periods.

(j) This section expires on April 1, 1975.

#### Minimum Speed Regulations

Sec. 170. (a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the State Highway Commission, Texas Turnpike Authority, County Commissioners Court, or the governing body of an incorporated city, town, or village, within their respective jurisdictions, as specified in Sections 167, 168 and 169, determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the said State Highway Commission, Texas Turnpike Authority, County Commissioners Court, or governing body of an incorporated city, town or village are hereby empowered and may determine and declare a minimum speed limit thereat or thereon, and when appropriate signs are erected, giving notice of such minimum speed limit, no person shall drive a vehicle below that limit except when necessary for safe operation or in compliance with law.

#### Charging Violations and Rule in Civil Cases

Sec. 171. (a) In every charge of violation of any speed regulation in this Act, the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the maximum or minimum speed limit applicable within the district or at the location.

(b) The provisions of this Act declaring maximum or minimum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

Exceptions to Speed Law

Sec. 172. The provisions of this Article regulating speeds of vehicles shall not apply to vehicles operated by the fire department of any city, town or village responding to calls, nor to police patrols, nor to physicians and/or ambulances responding to emergency calls, provided that incorporated cities and towns may by ordinance regulate the speed of ambulances.

ARTICLE XX—MISCELLANEOUS RULES

Limitations on Backing

Sec. 173. (a) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

Riding on Motorcycles

Sec. 174. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

Obstruction to Driver's View or Driving Mechanism

Sec. 175. (a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or motorman's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

Opening and Closing Vehicle Doors

Sec. 176. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

Riding in House Trailers

Sec. 177. No person or persons shall occupy a house trailer while it is being moved upon a public highway.

ARTICLE XXI—OPERATION OF BICYCLES AND PLAY VEHICLES

Effect of Regulations

Sec. 178. (a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this Article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Act.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

(d) All provisions of this Act applicable to bicycles also apply to motor-assisted bicycles unless because of their nature they can have no application to those vehicles.

Traffic Laws Apply to Persons Riding Bicycles

Sec. 179. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except as to special regulations in this Article and except as to those provisions of this Act which by their nature can have no application.

Riding on Bicycles

Sec. 180. (a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

Clinging to Vehicles

Sec. 181. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.

Riding on Roadways and Bicycle Paths

Sec. 182. (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

Carrying Articles

Sec. 183. No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.

Lamps and Other Equipment on Bicycles

Sec. 184. (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the Department which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to

the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

[ARTICLE XXII—OPERATION IN PARTICULAR CIRCUMSTANCES]

*Article head editorially supplied.*

**Racing on Highways**

Sec. 185. (a) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(b) Drag race is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(c) Racing is defined as the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

**Fleeing or Attempting to Elude a Police Officer**

Sec. 186. (a) Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

(b) Every person convicted of fleeing or attempting to elude a police officer shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by both such fine and imprisonment.

**Driving Upon Sidewalk**

Sec. 187. No person shall drive any vehicle upon a sidewalk or sidewalk area except upon

a permanent or duly authorized temporary driveway.

**Cutting Across Certain Property Prohibited**

Sec. 188. No person driving a vehicle shall cross a sidewalk or drive through a driveway, parking lot, or business or residential entrance without bringing the vehicle to a complete stop. No person driving a vehicle shall cross, drive in or on such sidewalks, driveways, parking lots or entrances at an intersection for the purpose of making either a right or left turn from one street or highway to another street or highway.

[Acts 1947, 50th Leg., p. 967, ch. 421; Acts 1949, 51st Leg., p. 1175, ch. 589, § 1; Acts 1951, 52nd Leg., p. 253, ch. 149, § 1; Acts 1951, 52nd Leg., p. 319, ch. 194, § 1; Acts 1951, 52nd Leg., p. 354, ch. 479, § 1; Acts 1953, 53rd Leg., p. 719, ch. 280, §§ 1, 2; Acts 1953, 53rd Leg., p. 738, ch. 290, §§ 2 to 4; Acts 1953, 53rd Leg., p. 749, ch. 297, § 1; Acts 1953, 53rd Leg., p. 791, ch. 321, § 1; Acts 1953, 53rd Leg., p. 803, ch. 326, § 1; Acts 1953, 53rd Leg., p. 884, ch. 363, § 1; Acts 1955, 54th Leg., p. 378, ch. 100, § 1; Acts 1955, 54th Leg., p. 519, ch. 155, § 1; Acts 1955, 54th Leg., p. 757, ch. 275, § 1; Acts 1955, 54th Leg., p. 817, ch. 303, §§ 2, 3; Acts 1957, 55th Leg., p. 784, ch. 321, § 1; Acts 1959, 56th Leg., p. 93, ch. 47, § 1; Acts 1959, 56th Leg., p. 232, ch. 135, § 1; Acts 1959, 56th Leg., p. 664, ch. 307, § 1; Acts 1959, 56th Leg., p. 839, ch. 378, §§ 1, 2; Acts 1961, 57th Leg., p. 266, ch. 141, § 1, eff. Sept. 1, 1961; Acts 1961, 57th Leg., p. 439, ch. 213, § 1, eff. May 25, 1961; Acts 1961, 57th Leg., p. 554, ch. 259, § 2; Acts 1963, 58th Leg., p. 455, ch. 161, § 1, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 1364, ch. 519, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 61, ch. 21, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 443, ch. 226, §§ 1 to 3, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 767, ch. 358, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 774, ch. 365, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 542, ch. 238, § 1, eff. May 20, 1967; Acts 1967, 60th Leg., p. 790, ch. 331, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1175, ch. 526, §§ 1, 2, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1219, ch. 550, § 1, eff. June 14, 1967; Acts 1969, 61st Leg., p. 79, ch. 37, § 1, eff. March 27, 1969; Acts 1969, 61st Leg., p. 811, ch. 271, §§ 1 to 5, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1019, ch. 329, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1046, ch. 340, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1189, ch. 383, § 1, eff. May 29, 1969; Acts 1969, 61st Leg., p. 1671, ch. 534, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2342, ch. 793, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 708, ch. 73, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 723, ch. 83, §§ 1 to 102, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 953, ch. 164, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2366, ch. 727, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2384, ch. 741, §§ 1, 2, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2418, ch. 767, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2900, ch. 960, §§ 2 to 5, eff. Jan. 1, 1973; Acts 1971, 62nd Leg., p. 3046, ch. 1007, § 1, eff. Aug. 30, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 18, ch. 3, §§ 1 to 3, eff. Oct. 17, 1972; Acts 1973, 63rd Leg., p. 15, ch. 12, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 226, ch. 101, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 282, ch. 131, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 347, ch. 146, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 707, ch. 302, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1289, ch. 478, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1291, ch. 480, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1338, ch. 504, §§ 1, 2, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1675, ch. 607, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1680, ch. 607, § 8, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., 1st C.S., p. —, ch. 1, § 1, eff. Dec. 21, 1973.]

Acts 1969, 61st Leg., p. 811, ch. 271, which added § 2A and amended sections 134, 140 to 142 of this article, provided in section 5A: "Senate Bill No. 5, Acts of the 61st Legislature, Regular Session, 1969 (Article 698d, Penal Code of Texas, 1925 [transferred to art. 4477-5b]), pertaining to the offense of air pollution, shall not apply to any act or omission covered by this Act, and any act or

omission which constitutes a criminal offense under this Act shall not constitute or be punishable as a criminal offense under said Senate Bill No. 5."

Acts 1969, 61st Leg., p. 2342, ch. 793, which by section 1 amended § 71 of this article, also provided: "Sec. 2. That [former] Section 73, Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes), and Sections 2 and 3, Chapter 342, Acts of 55th Legislature, Regular Session, 1957 (Article 827e-1, Vernon's Texas Penal Code), are hereby repealed and any and all laws or parts of laws heretofore enacted which are in conflict with or inconsistent with the terms and provisions of Section 1 of this Article are hereby repealed and held for naught."

A former section 73 of this article, enacted by Acts 1947, 50th Leg., p. 967, ch. 421, was repealed by Acts 1969, 61st Leg., p. 2342, ch. 793, § 2.

The subject matter of § 108B, repealed in 1971, is now covered by section 108(d) to (g) of this article.

The subject matter of § 139a, repealed in 1971, is now covered by section 139A of this article.

Section 104 of Acts 1971, 62nd Leg., p. 773, ch. 83, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Acts 1971, 62nd Leg., p. 2366, ch. 727, which by section 1 amended § 139D(b) of this article, provided in section 2: "The intent of this bill is to further clarify restrictions contained in Section 86 of Senate Bill No. 183 [Acts 1971, 62nd Leg., p. 764, ch. 83, § 86, which added sec. 139D of this article]."

Acts 1971, 62nd Leg., p. 2900, ch. 960, which by sections 2 to 5 amended §§ 135, 140, 141 and 142, provided in section 1: "This Act takes effect on January 1, 1973."

#### Art. 6701d-1. Children Standing in School Bus

It is further provided that it shall be unlawful for any driver of any school bus to permit more than one (1) child per seat to stand while said bus is travelling to or from the school being served.

[Acts 1953, 53rd Leg., p. 719, ch. 280, § 3A.]

#### Art. 6701d-2. Approval and Filing of Rules and Regulations

Wherever in this Act the Department is authorized to prescribe or to promulgate rules and regulations, such rules and regulations, before they shall become effective, shall be first approved in writing by the Attorney General and filed in the office of the county clerk of each county in this State for public inspection during business hours. Any changes or amendments to such rules and regulations likewise shall be first approved in writing and filed in the office of the county clerk of each county in this State.

[Acts 1953, 53rd Leg., p. 738, ch. 290, § 4a.]

#### Art. 6701d-3. Proof of Existence of Traffic Control Device; Prima Facie Proof of Lawful Installation

In any civil case in this State, proof by either party to the case of the existence of any traffic control device, including, but not limited to, control lights, stop signs, and one-way street signs, on or alongside any public thoroughfare shall constitute prima facie proof of all facts (including proof of competent authority and a duly enacted ordinance by municipalities or all duly promulgated orders by Commissioners Courts) necessary to prove the proper, lawful installation of such sign or device at that place. Such proof of the existence

of any one-way street sign shall further constitute prima facie proof that the public thoroughfare on or alongside of which it was placed was duly designated by proper, competent authority to be a one-way public thoroughfare for traffic to go only in the direction indicated by the sign. The prima facie proof herein provided for may be rebutted by any party to the suit.

[Acts 1961, 57th Leg., p. 697, ch. 325, § 1, eff. Aug. 28, 1961.]

#### Art. 6701d-4. Fishing from, or Leaving Dead Fish, Crabs, or Bait, Upon Road Surface or Bridge

Sec. 1. From and after the effective date of this Act it shall be unlawful for any person to engage in fishing from, or to deposit or leave any dead fish, crabs, or bait upon, the road surface or deck of any causeway, or bridge located on any highway which is being maintained by the State Highway Department. Provided that it shall be legal to fish from any section of such structure other than the deck or road surface.

Sec. 2. Any person who shall violate the terms of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Dollar (\$1) nor more than Fifty Dollars (\$50).

Sec. 3. The State Highway Commission, through and by its authorized agents or representatives, is hereby instructed to post signs on every causeway, bridge, or structure affected by this Act.

[Acts 1939, 46th Leg., Spec.Laws, p. 834.]

#### Art. 6701d-5. Obstructing Railway Crossing

Any officer, agent, servant or receiver of any railway corporation who wilfully obstructs for more than five minutes at any one time any street, railway crossing or public highway by permitting their train to stand on or across such crossing, shall be fined not less than five nor more than one hundred dollars.

[1925 P.C.]

#### Art. 6701d-6. Exceptions as to Railways

The city council of any incorporated city may by ordinance grant a franchise to a railway company to obstruct a street crossing, not a part of a "Designated State Highway," by railway passenger trains for the purpose of receiving and discharging passengers, mail, express or freight, for a longer time than specified herein, and may enact and enforce reasonable ordinances in the premises. When any such franchise has been granted under the provisions of this law, the street crossing named therein shall be excepted from the preceding article. The provisions hereof shall not apply to a city having a special charter unless it shall first be amended so as to adopt the provisions hereof.

[1925 P.C.]

**Art. 6701d-7. Violation of Promise to Appear**

In case of any person arrested for violation of the preceding articles<sup>1</sup> relating to speed of vehicles, unless such person so arrested shall demand that he be taken forthwith before a court of competent jurisdiction for an immediate hearing, the arresting officer shall take the license number, name and make of the car, the name and address of the operator or driver thereof, and notify such operator or driver in writing to appear before a designated court of competent jurisdiction at a time and place to be specified in such written notice at least five days subsequent to the date thereof, and upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release such person from custody. Any person wilfully violating such promise, regardless of the disposition of the charge upon which he was originally arrested, shall be fined not less than five nor more than two hundred dollars.

[1925 P.C.]

<sup>1</sup> Penal Code arts. 790 and 791; repealed by § 3(a) of Acts 1973, 63rd Leg., p. 991, ch. 399, enacting the new Texas Penal Code.

**Art. 6701d-8. Arrests for Speeding**

No officer shall have authority to make any arrests for violation of the laws of this State relating to the speed of motor vehicles unless he is at the time of such arrest wearing a uniform and badge clearly distinguishing him from ordinary civilians or private citizens, and shall have no authority to make any such arrests by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating the speed laws in reference to motor vehicles. No such officer, and no sheriff, constable, marshal, policeman, traffic officer, or other officer shall be entitled to any fee for making an arrest or serving a warrant of arrest or claim, demand or receive any witness fee or commitment fee for an alleged violation of any law of this State relative to such speeding. It shall be the duty of the district or county attorney, as the case may be, to dismiss any and all prosecutions wherein it is shown that the arrest was made by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating such speed law, and this provision shall apply to such conduct by any highway officer, sheriff, deputy sheriff, constable, marshal, policeman, or any other officer of this State, or political subdivision thereof, provided any officer pursuing or lying in wait in any vehicle other than a motorcycle shall be held to be designedly remaining in hiding as defined in this Act. Provided, however, that the provision hereof pertaining to motor equipment and uniform, shall not apply to an arrest made within the incorporated limits of a city or town having a population less than Ten Thousand (10,000) inhabitants, according to the Federal Census report of 1920.

The venue of any prosecution for speeding of motor vehicles under State laws shall be in the

justice precinct only wherein the offense was committed or in the precinct of the defendant's residence. The badge herein required to be worn by an officer making an arrest shall be diamond-shaped, and the uniform prescribed to be worn by such officer or officers shall consist of a cap, coat and trousers of dark grey color, provided that the uniform worn by city policemen within the corporate limits of an incorporated city or town may be either blue or dark grey in color.

If any peace officer willfully violates any provision of this Act, he shall, upon conviction, be fined in any sum not to exceed Two Hundred (\$200.00) Dollars.

The Attorney General or any County Attorney may institute quo warranto to oust from office any officer violating any provision of this Act or permit any deputy to do so.

[Acts 1927, 40th Leg., p. 321, ch. 218, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 83, ch. 47, § 1; Acts 1930, 41st Leg., 5th C.S., p. 239, ch. 76, § 1.]

**Art. 6701d-9. Badge and Uniform of Officers**

No Sheriff, Constable, or Deputy or either, shall have authority to arrest or accost any person for driving a motor vehicle over the highways of this State in violation of the law relating to motor vehicles unless he is at the time wearing on his left breast on the outside of his garment so that it can be clearly seen a badge showing his title, and unless he is also wearing a cap, coat or blouse, and trousers of dark grey color, or dark blue, which cap and other uniform shall be of the same color. Provided, if any person shall violate the provisions hereof, he shall be guilty of a misdemeanor and shall be punished as provided in Section 3 hereof, and if any officer charged by law so to do shall refuse to take any complaint or prosecute the same, he shall be removed from office.

[Acts 1931, 42nd Leg., p. 503, ch. 280, § 3a.]

**Art. 6701d-10. Tire Equipment of Trailer or Tractor**

Whoever shall operate or permit to be operated upon a public highway a motor vehicle, trailer, semi-trailer or tractor equipped with solid rubber tires less than one inch in thickness at any point from the surface to the rim, or if equipped with pneumatic tires when one or more of such tires has been removed, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6701d-11. Regulating Operation of Vehicles on Highways****Definitions**

Sec. 1. The following words and phrases, when used in this Act, shall, for the purpose of this Act, have the meanings respectively ascribed to them in this section, as follows:

"Vehicle." Every mechanical device, in, upon or by which any person or property is or may be transported or drawn upon a public highway, including motor vehicles, commercial motor vehicles, truck-tractors,

trailers, and semi-trailers, severally, as hereinafter defined, but excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"Motor Vehicle." Every vehicle, as herein defined, which is self-propelled.

"Commercial Motor Vehicle." Any motor vehicle other than a motorcycle, designed or used for the transportation of property, including every vehicle used for delivery purposes.

"Truck-tractors." Every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Trailer." Every vehicle without motive power designed or used for carrying property or passengers wholly on its own structure and to be drawn by a motor vehicle.

"Semi-trailer." Every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle.

"Department." The State Highway Department of this State acting directly or through its duly authorized officers and agents.

**Weights and Loads of Vehicles; Special Permits; Municipal Regulation**

Sec. 2. (a) Except as otherwise provided by law, no person may drive, operate, or move, nor may the owner cause or permit to be driven, operated or moved, on any highway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this Act, or any vehicle or vehicles which are not constructed or equipped as required by this Act, or transport thereon any load or loads exceeding the dimensions or weight prescribed in this Act.

(b) The Commissioners Courts through the County Judges of the several counties of this State may issue permits limited to periods of ninety (90) days or less for the transportation over highways of their respective counties other than State highways and public roads within the boundaries of an incorporated municipality, overweight or oversize or overlength commodities which cannot be reasonably dismantled, or for the operation over these highways of superheavy or oversize equipment for the transportation of oversize or overweight or overlength commodities which cannot be reasonably dismantled. A County Judge may exercise authority independently of the Commissioners Court until the Commissioners Court takes action on each request.

(c) The Commissioners Court, in its discretion, may require a bond to be executed by an applicant in an amount sufficient to guarantee the payment of any damages to any road or bridge sustained as a consequence of the transportation authorized by the permit.

(d) The governing body of any incorporated municipality may regulate the movement and operation of overweight or oversize or overlength commodities which cannot reasonably be dismantled, and the movement and operation of superheavy or oversize equipment for the transportation of oversize or overweight or overlength commodities which cannot be reasonably dismantled, on public roads other than state highways within the corporate boundaries of the municipality.

**Width, Length and Height**

Sec. 3. (a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, excepting further that the limitations as to size of vehicle stated in this Section shall not apply to implements of husbandry, machinery used solely for the purpose of drilling water wells regardless of whether it is a unit in itself or is a unit mounted on a conventional vehicle or chassis, and highway building and maintenance machinery temporarily propelled or moved upon the public highways, excepting further, that the limitations as to size of vehicles stated in this Section shall not apply to vehicles on which implements of husbandry are being carried or moved provided such vehicles are being moved by the owner thereof or his agent or employee for the purpose of carrying on agricultural operations, and provided further that such implements are being moved or carried a distance of not more than fifty (50) miles, and excepting further, that the width of a motor bus or trolley bus operated exclusively within the limits of an incorporated city in this State with inhabitants thereof in excess of four hundred and twenty-five thousand (425,000) according to the last preceding Federal census, and within cities, towns and suburbs contiguous thereto, shall not exceed one hundred and two (102) inches.

No vehicle, other than vehicles herein exempted from these provisions, which has a total outside width, including any load thereon, in excess of the applicable width herein stated shall be permitted to operate on the public highways except under a special permit issued for such movement as prescribed in Section 2 of this Act or in Chapter 41, General Laws of the Forty-first Legislature, Second Called Session, 1929, as amended (Article 6701a of Vernon's Texas Civil Statutes) or except as authorized in some other Statute permitting or regulating such movement.

(b) No vehicle unladen or with load shall exceed a height of thirteen feet six inches (13' 6") including load; provided, however, it shall be unlawful to operate or attempt to operate any vehicle over or on any bridge or through any underpass or similar structure unless the height of such vehicle, including load, is less than the vertical clearance of such structure as shown by the records of the Department. In every case or proceeding, civil and criminal, in which a violation of this Act may be an is-

sue, a certificate signed by the State Highway Engineer as to such vertical clearance shall be admissible in evidence for all purposes.

(c) No motor vehicle shall exceed a length of forty-five (45) feet. Except as provided in Subsection (c-1) of this section, it shall be lawful for any combination of vehicles to be coupled together including, but not limited to, a truck and semi-trailer, truck and trailer, truck-tractor and semi-trailer and trailer, truck-tractor and two trailers, provided such combination of vehicles shall not exceed a length of sixty-five (65) feet, unless such vehicle or combination of vehicles is operated exclusively within the limits of an incorporated city or town; and unless, in the case of any combination of such vehicles, same be operated by municipal corporations in adjoining suburbs wherein said municipal corporation has heretofore been using such or like equipment in connection with an established service to such suburbs of the municipality; provided further, that motor buses as defined in Acts of the 41st Legislature, 2nd Called Session, 1929, Chapter 88, as amended,<sup>1</sup> exceeding thirty-five (35) feet in length, but not exceeding forty (40) feet in length, may be lawfully operated over the highways of this state if such motor buses are equipped with air brakes and have a minimum of four (4) tires on the rear axle; and provided further, that the above limitations shall not apply to any mobile home or to any combination of a mobile home and a motor vehicle, but no mobile home and motor vehicle combination shall exceed a total length of fifty-five (55) feet. "Mobile home" as used herein means a living quarters equipped and used for sleeping and eating and which may be moved from one location to another over a public highway by being pulled behind a motor vehicle. No mobile home, as the same is defined herein, shall be entitled to the exemption contained in this Subsection unless the owner thereof shall have paid all taxes, including ad valorem taxes, and fees due and payable under the laws of this state, levied on said mobile home.

(c-1) (1) In this subsection:

(A) "Passenger car" means a motor vehicle designed for the transportation of persons which is not designed to accommodate more than ten (10) persons at one time.

(B) "Towing device" means a device used to tow a vehicle behind a motor vehicle by supporting one end of the towed vehicle above the surface of the road while permitting the wheels at the other end of the towed vehicle to remain in contact with the road.

(2) Except as provided in Subdivision (3), no passenger car, regardless of weight, nor any other motor vehicle with an unloaded weight of less than two thousand five hundred (2,500) pounds, may be coupled with more than one other vehicle or towing device at one time.

(3) If a passenger car or other motor vehicle has an unloaded weight of two thousand five hundred (2,500) pounds or more, it may be coupled with a towing device and one other vehicle. Subdivision (2) of this subsection does not apply to the towing of a disabled vehicle to the nearest intake place for repairs.

(d) No train or combination of vehicles or vehicle operated alone shall carry any load extending more than three (3) feet beyond the front thereof, nor, except as hereinbefore provided, more than four (4) feet beyond the rear thereof.

(e) No passenger vehicle shall carry any load extending more than three (3) inches beyond the line of the fenders on the left side of such vehicle, nor extending more than six (6) inches beyond the line of the fenders on the right side thereof; provided, that the total over-all width of such passenger vehicle shall in no event exceed ninety-six (96) inches, including any and all such load.

(f) Immediately upon the taking effect of this Act, it shall thereafter be unlawful for any person to operate or move, or for any owner to cause to be operated or moved, any motor vehicle or combination thereof over the highways of this State which shall have as a load or as a part of the load thereon any product, commodity, goods, wares or merchandise which is contained, boxed or bound in any container, box or binding containing more than thirty (30) cubic feet and weighing more than five hundred (500) pounds where there are more than fourteen (14) of such containers, boxes or bindings being carried as a load on any such vehicle or combination thereof; provided, that no number of any such containers, boxes or bindings shall be carried as the whole or part of any load exceeding seven thousand (7000) pounds on any such vehicle or combination thereof; and provided, that if this subsection is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that this section be declared unconstitutional; providing, further, that if this Act or any section, subsection, sentence, clause or phrase thereof is held to be unconstitutional and invalid by reason of the inclusion of this section, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause or phrase thereof without this section.

<sup>1</sup> Article 6675a-1 et seq.

Transportation of Certain Loose Materials; Restrictions; Exceptions; Penalties

Sec. 3a. (a) No person, co-partnership, limited partnership, association, corporation, State, county, municipality, town, village, or any department or political subdivision thereof, their agents or employees, shall load or transport, cause to be loaded or transported, or aid or abet the loading or transporting, in a motor

vehicle, commercial motor vehicle, truck-tractor, trailer or semi-trailer, any loose material on or over the public roads, streets or highways of this State in violation of any requirement of this section.

(b) As used in this section, "loose material" means dirt, sand, gravel, wood chips, or other material that is capable of blowing or spilling from a vehicle as a result of movement or exposure to air, wind currents, or weather, but shall not include agricultural products in their natural state.

(c) The bed carrying the load must be completely enclosed on both sides by sideboards or sidepanels, on the front by a board or panel or by the cab of the vehicle, and on the rear by tailgate or board or panel, all of which must be so constructed as to prevent the escape of any part of the load because of blowing or spilling.

(d) The top of the load making contact with any sideboard or sidepanel or front or rear part of the enclosure must not be within six inches of the top of the part of the enclosure contacted, and the highest point of the load must not be above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the enclosure that is the least in height, or in the alternative by covering the load with a canvas or similar type covering firmly secured thereby creating a physical horizontal plane; and at no time shall the load exceed the six inches as stated in this section during transportation of load without being covered.

(e) The excess spillage of loose material on the non-load carrying parts of the vehicle occasioned by or from the act of loading shall be removed before the vehicle is operated over a public road, street, or highway of this State.

(f) The tailgate must be securely closed to prevent spillage during transportation, whether loaded or empty.

(g) The bed shall not have any holes, cracks, or openings through which loose material may escape.

(h) The residue of the transported loose material shall be removed from the non-load carrying parts of the vehicle upon completion of unloading before the vehicle is operated over a public road, street, or highway of this State.

(i) Subsection (d) of this section does not apply to any load-carrying compartment that completely encloses the load or to the transporting of any load that is otherwise suitably covered or secured by other means which prevents the escape of loose material.

(j) Nothing in this Section 3A applies to any vehicle or construction or mining equipment which is:

- (1) moving between construction barricades on a public works project; or
- (2) merely crossing a public road, street, or highway.

(k) Any person, co-partnership, limited partnership, association, corporation, or any departmental head, agent or employee of the State or of any county, municipality, town, village, or any department or political subdivision thereof who fails to comply with the provisions of this section shall be guilty of a misdemeanor, and upon first conviction shall be fined a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and on second conviction a sum of not less than Two Hundred Dollars (\$200).

Lights or Flags on Extended Loads

Sec. 4. Wherever the load or drawbar or coupling on any vehicle shall extend beyond the rear or the bed or body thereof, there shall be displayed at the end of such load or extension, in such position as to be clearly visible at all times from the rear of such load or extension, a red flag not less than twelve (12) inches both in length and width, except that between one-half hour<sup>1</sup> after sunset and one-half hour before sunrise there shall be displayed at the end of any such load or extensions a red light, plainly visible under normal atmospheric conditions at least five hundred (500) feet from the rear of such vehicle.

<sup>1</sup> So in enrolled bill. Session Laws omit word "hour."

Weight of Load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

- (1) No group of axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

Distance in feet between the extremes of any group of axles	Maximum load in pounds carried on any group of axles
4	32,000
5	32,000
6	32,000
7	32,000
8	33,700
9	35,400
10	37,100
11	38,800
12	40,600
13	42,300
14	44,000
15	45,500
16	47,000
17	48,400
18	49,900
19	51,400
20	52,800
21	54,300
22	55,800

Distance in feet between the extremes of any group of axles	Maximum load in pounds carried on any group of axles
23	57,200
24	58,700
25	59,650
26	60,600
27	61,550
28	62,500
29	63,450
30	64,400
31	65,350
32	66,300
33	67,250
34	68,200
35	69,150
36	70,100
37	71,050
38	72,000
39	72,000
40	72,000
41	72,000
42	72,000
43	72,000
44	72,000
45	72,000
46	72,000

The weights set forth in column two of the above table shall constitute the maximum permissible gross weight for any such vehicle or combination of such vehicles.

(2) In no event shall the total gross weight, with load, of any vehicle or combination of vehicles, exceed seventy-two thousand (72,000) pounds.

(3) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(4) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch, width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and nine thousand (9,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and eighteen thousand (18,000) pounds on low-pressure tires. The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-two thousand (32,000) pounds for each such tandem axle group. Tandem axle group is defined to be two (2) or more axles spaced

forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

Farm-to-Market and Ranch-to-Market Roads;  
Highway Commission to Fix Loads

Sec. 5½. The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum gross weight of vehicle, or combination thereof, and load as well as the maximum axle and wheel loads, to be transported or moved on, over or upon any State highway or any road that has been classified by the Highway Commission and shown by the records of the Commission as a Farm-to-Market or Ranch-to-Market Road under the jurisdiction of the State Highway Commission, at less than the maximums hereinbefore fixed by law, taking into consideration the width, condition and type of pavement structures and other circumstances on such road, when it is found that greater maximum weights would tend to rapidly deteriorate or destroy the roads, bridges or culverts along the particular road or highway sought to be protected. Whenever the State Highway Commission shall determine and fix the maximum gross weight of vehicle, or combination thereof, and load or maximum axle and wheel loads, which may be transported or moved on, over or upon any such State Highway or Farm-to-Market or Ranch-to-Market road at a less weight than the respective maximums hereinbefore set forth in this Act and shall declare such maximums by proper order of the Commission entered on its minutes, such gross weight of vehicle, or combination thereof, and load and maximum axles and wheel loads shall become effective and operative on said highway or road when appropriate signs giving notice thereof are erected under the order of the Commission on such State highway or Farm-to-Market or Ranch-to-Market road.

The Commissioners Court of any county shall have the same power and authority to limit the maximum weights to be transported or moved on, over or upon any county road, bridge or culvert that is given by this Act to the State Highway Commission with respect to State highways and State Farm-to-Market and Ranch-to-Market roads. The Commissioners Court shall exercise its authority with respect to county roads in the same manner and under the same conditions as provided herein for the State Highway Commission with respect to highways and roads under its jurisdiction, and its action shall be entered on its minutes and become effective and operative on county roads when appropriate signs giving notice thereof are erected on such roads in accordance with the order of the Commissioners Court.

It shall be unlawful for and constitute a misdemeanor for any person, corporation, receiver or association to drive, operate or move, or for the owner to cause or permit to be driven, operated or moved, on any such highway or road any vehicle, or combination of vehicles, which

in any respect exceeds the maximum gross weight or maximum axle or wheel loads fixed for any such highway or road by the State Highway Commission or a Commissioners Court in accordance with the terms of this Section. Any person, corporation, receiver or association who commits the violation heretofore set out shall, upon conviction, be subject to and punished by the same fines and penalties for the first and subsequent offenses as are set out in Section 5 of House Bill No. 19, Chapter 71, Acts of the Forty-seventh Legislature, Regular Session, 1941, (codified in Vernon's as Section 9c of Article 827a of the Penal Code).<sup>1</sup>

Provided, however, that nothing in this Act shall in anywise alter, amend or repeal any law of this State authorizing or providing for special permits for weights in excess of those provided by law or fixed under this Act.

Provided, further, that this Section shall not apply to vehicles making deliveries of groceries or farm products to destinations requiring travel over such roads; but, if for any reason this exception is unconstitutional or invalid, it is the intention of the Legislature to enact, and it does here and now enact and pass, this Act without such exception; and if it be invalid, such exception alone shall fall and be held for naught, and the remainder of the Act shall be and remain unimpaired and it is so enacted.

<sup>1</sup> Section 9-c of this article.

**Applicant for Registration to Show Weight and Maximum Load; License Receipt; Penalty for Violation**

Sec. 5(a). Upon application for registration of any commercial motor vehicle, truck tractor, trailer or semi-trailer, the applicant shall deliver to the Tax Collector, or one of his duly authorized deputies, an affidavit, duly sworn to before an officer authorized to administer oaths, showing the weight of said vehicle, the maximum load to be transported thereon, and the total gross weight for which said vehicle is to be registered; which affidavit shall be kept on file by the Collector. The license receipt issued to the applicant shall also show said total gross weight for which said vehicle is registered. A copy of said receipt shall be carried at all times on any such vehicle while same is upon the public highway.

The copy of the registration license receipt above required shall be admissible in evidence in any cause in which the gross registered weight of such vehicle is an issue, and shall be prima facie evidence of the gross weight for which such vehicle is registered. Such copy of the registration license receipt shall be displayed to any officer authorized to enforce this Act, upon request by such officer.

The driver, owner operator, or other person operating or driving such vehicle, failing to comply with this provision of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars.

**Exception to Limitation on Weight**

Sec. 5a. Notwithstanding other provisions of the statutes governing the weight of motor vehicles which may be operated over, on, and upon the highways and roads of this state, it shall be lawful to operate motor vehicles whose total gross weight shall not exceed fifty-eight thousand (58,000) pounds, where such vehicles comply with all other provisions of law excepting only as to their total gross weight and the limitations of weight on axle or group of axles, where such vehicles are used exclusively for transporting fixed load oil field service equipment used in connection with servicing oil and gas wells from the point of origin to well location not more than fifty (50) highway miles distant from such origin.

Sec. 5(b). Repealed by Acts 1941, 47th Leg., p. 86, ch. 71, § 2.

**Weighing Loaded Vehicles by Inspectors**

Sec. 6. Subd. 1. Any License and Weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy, having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales furnished or approved by the Department of Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales for the purpose of weighing. In the event the gross weight of such vehicle be found to exceed the maximum gross weight authorized by law, plus a tolerance allowance of five per cent (5%) of the gross weight authorized by law, such license and weight inspector, highway patrolman, sheriff or his duly authorized deputy, shall demand and require the operator or owner of such motor vehicle to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum authorized by law plus such tolerance allowance. Such operator or owner shall forthwith unload such vehicle to the extent necessary to reduce the gross weight thereof to such lawful maximum and such vehicle may not be operated further over the public highways or roads of the State of Texas until the gross weight of such vehicle has been reduced to a weight not in excess of the maximum limit plus such tolerance allowance. In the event the axle load of any such vehicle be found to exceed the maximum authorized by law, plus a tolerance allowance of five per cent (5%) of the axle load authorized by law, such officer shall demand and require the operator or owner thereof to rearrange his cargo, if possible, to bring such vehicle and load within the maximum axle load authorized by law, and if this cannot be done by rearrangement of said cargo, then such portion of the load as may be necessary to decrease the axle load to the maximum authorized by law plus such tolerance allowance shall be unloaded before such vehicle may be operated further

over the public highways or roads of the State of Texas. Provided, however, that if such load consists of livestock, then such operator shall be permitted to proceed to destination without being unloaded provided destination be within the State of Texas.

It is further provided that in the event the gross weight of the vehicle exceeds the registered gross weight, the License and Weight Inspector, State Highway Patrolman or Sheriff or his duly authorized Deputy shall require the operator or owner thereof to apply to the nearest available County Tax Assessor-Collector for additional registration in an amount that will cause his gross registration to be equal to the gross weight of the vehicle, provided such total registration shall not exceed gross weight allowed for such vehicle, before such operator or owner may proceed. Provided, however, that if such load consists of livestock or perishable merchandise then such operator or owner shall be permitted to proceed with his vehicle to the nearest practical point in the direction of his destination where his load may be protected from damage or destruction in the event he is required to secure additional registration before being allowed to proceed. It shall be conclusively presumed and deemed prima facie evidence that where an operator or owner is apprehended and found to be carrying a greater gross load than that for which he is licensed or registered, he has been carrying similar loads from the date of purchase of his current license plates and will therefore be required to pay for the additional registration from the date of purchase of such license. Provided further that when an operator or owner is required to purchase additional registration in a county other than the county in which the owner resides, the Tax Assessor-Collector of such county shall remit the fees collected for such additional registration to the State Highway Department to be deposited in the State Highway Fund. It shall be the duty of the State Highway Department, and the necessary funds are hereby appropriated, to remit the counties' portion of such fees collected to the county of the residence of the owner; and it is provided further that the provisions of this Section will in no way conflict with Article 6675a, Section 2, of the Revised Civil Statutes.

It is further provided that all forms and accounting procedure necessary to carry out the provisions of this Section shall be prescribed by the State Highway Department.

Subd. 2. The officers named herein are the only officers authorized to enforce the provisions of this Act.

Subd. 3. It shall be unlawful for any of the persons, officers or deputies authorized to enforce the weighing and unloading provisions of this Act, to accept or agree to accept any gift, emolument, money or thing of value, privilege or the promise of either, from any person, firm, corporation, association, partnership, or the officers, agents, servants, or employees thereof as an inducement to enforce or attempt

to enforce the weighing and unloading provisions of this Act. Any person who violates the provisions of this Section shall be guilty of a felony and upon conviction shall be punished as provided in Article 159, Penal Code of Texas.<sup>1</sup>

Subd. 4. It shall be unlawful for any person, firm, corporation, association, partnership, or the officers, agents, servants or employees thereof, to give, or offer to give or promise to give to any of the persons, officers or deputies authorized to enforce the weighing and unloading provisions of this Act, any gift, emolument, money or thing of value, privilege, or the promise of either, as an inducement to enforce or attempt to enforce the weighing and unloading provisions of this Act. Any person who violates the provisions of this Section shall be guilty of a felony and upon conviction shall be punished as provided in Article 158, Penal Code of Texas.<sup>1</sup>

Provided, however, if a corporation shall be convicted of a violation of any of the provisions of this Section the penalty shall be a fine of not less than One Hundred Dollars (\$100) nor shall be a fine of not more than Five Thousand Dollars (\$5,000) for each such offense.

Subd. 5. The inhibitions in Subdivisions 3 and 4 above shall not apply to the regular compensation paid to such persons or officers by the State or a county of this State.

<sup>1</sup> Repealed; see, now, Penal Code, § 36.02.

#### Length of Connections Between Vehicles

Sec. 7. (a) Repealed by Acts 1965, 59th Leg., p. 123, ch. 50, § 2, eff. Sept. 1, 1965.

(b) The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed twenty (20) feet in length from one vehicle to the other.

Sec. 8. Repealed by Acts 1963, 58th Leg., p. 455, ch. 161, § 2, eff. Aug. 23, 1963.

#### Equipment With Lights, Brakes, Etc.

Sec. 9. Every motor vehicle, other than any road roller, road machinery or farm tractor, having a width at any part in excess of seventy (70) inches shall carry two clearance lamps on the left side of such vehicle, one located at the front and displaying a white light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and the other located at the rear of the vehicle and displaying a red or yellow light visible under like conditions from a distance of five hundred (500) feet to the rear of the vehicle, both of which lights shall be kept lighted while any such vehicle is upon the highway from one-half hour after sunset to one-half hour before sunrise. A motor vehicle requiring clearance lights hereunder may, in lieu of such clearance lights, be equipped with adequate reflectors conforming as to color and marginal location to the requirements for clearance lights. No such reflector shall be deemed adequate unless it is so designed, locat-

ed as to height and maintained as to be visible for at least two hundred (200) feet when opposed by the light of a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Reflectors herein referred to must be approved by the Department as to specifications before they can be lawfully used on a vehicle, and it shall be unlawful and constitute a misdemeanor to use a reflector on a motor vehicle unless it has been approved by the Department, and such approval by the Department shall be firmly affixed to such reflector.

All vehicles not heretofore by law required to be equipped with specified lighted lamps shall carry one or more lighted lamps or lanterns displaying a white light visible under normal atmospheric conditions from a distance of not less than five hundred (500) feet to the front of such vehicle and displaying a red or yellow light visible under like conditions from a distance of not less than five hundred (500) feet to the rear of such vehicle, which light shall be kept lighted while the vehicle is upon a highway from one-half hour after sunset to one-half hour before sunrise. Provided, however, that vehicles drawn by animal power may in lieu of such lamps or lanterns be equipped with adequate reflectors.

Every owner, driver or operator of a vehicle while it is upon the main traveled portion of the highway during the period from one-half hour after sunset to one-half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person upon the highway from a distance of at least two hundred (200) feet ahead, shall keep lighted all lamps or lighting devices with which such vehicle is required to be equipped, whether the vehicle is in motion or not.

It shall be unlawful for any person to operate or move any vehicle upon a highway with a red light thereon visible directly from the front thereof, except, that this provision shall not apply to law enforcement officers, fire departments, and ambulances.

Every motor vehicle other than a motorcycle when operated upon the highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels. Any motor vehicle or combination of motor vehicles, trailer, or semitrailer or other vehicle, shall be equipped with brakes upon one or more of such vehicles adequate to stop such combination of vehicles in dry weather upon a reasonably level surface within a distance of forty-five (45) feet from the spot where such brakes are first applied when such vehicle or

combination of vehicles are traveling at a rate of speed of twenty (20) miles per hour.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sounds audible under normal conditions for a distance of not less than two hundred (200) feet, and it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any bell, siren, compression or exhaust whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device, except that vehicles operated in the performance of duty by law enforcement officers, fire departments and ambulances may attach and use a bell, siren, compression or exhaust whistle.

Every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

Except as otherwise provided herein, it shall be unlawful for any person to operate or permit to be operated any commercial motor vehicle for hire or lease upon the highways of this State without first having obtained a chauffeur's license as provided in Article 6687 of the Revised Civil Statutes of Texas, 1925; and provided further, however, the driver or operator of such vehicle who has secured a driver's license under the provisions of any other statute of this State, shall not be required to secure the chauffeur's license under Article 6687 of the Revised Civil Statutes of Texas, 1925.

#### Warning Signals by Commercial Vehicles and Wreckers

Sec. 9-a. Repealed by Acts 1947, 50th Leg., p. 997, ch. 421, § 138.

#### Penalty for Violation of Section 9-a

Sec. 9-b. Any person violating any of the provisions of this Act<sup>1</sup> shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding Fifty Dollars (\$50) for the first offense, and by a fine not exceeding Two Hundred Dollars (\$200) for the second offense, or not exceeding Five Hundred Dollars (\$500), or imprisonment in the county jail, not to exceed sixty (60) days, or by both such fine and imprisonment in the discretion of the Court for each subsequent offense thereafter.

<sup>1</sup> This section and section 9-a of this article (repealed).

#### Penalty

Sec. 9-c. (a) Any person, corporation, receiver or association who violates any provision of Section 5<sup>1</sup> of this Act (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200); for a second conviction within one year thereafter such person, corporation, receiver, or as-

sociation shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver or association shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof.

(b) If any corporation is convicted for the violation of any provision of this Act and fails to pay the fine assessed, the district or county attorney in the county in which such conviction was had is hereby authorized to file suit in a court of competent jurisdiction against such corporation to collect such fine.

<sup>1</sup> Section 5 of this article.

#### Parked or Standing Vehicles

Sec. 10. No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of any incorporated town or city, when it is possible to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway; provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of 200 feet in each direction upon such highway.

Whenever any peace officer or license and weight inspector of the Department shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

#### Marking Highways

Sec. 11. The Department is hereby authorized to classify, designate and mark both intrastate and interstate State Highways lying within the boundaries of this State and to provide a uniform system of marking and signing such highways under the jurisdiction of this State, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states.

#### Designation of Main Highways

Sec. 12. The Department, with reference to State Highways under its jurisdiction, is hereby authorized to designate main traveled or through highways by erecting at the entrances thereto signs notifying drivers of vehicles to come to a full stop before entering or crossing any such highway; and whenever any such sign has been so erected, it shall be unlawful for the driver or operator of any vehicle to fail to stop in obedience thereto.

#### Unauthorized Markers or Lights

Sec. 13. No unauthorized person shall erect or maintain upon any State Highway any warning or direction sign, marker, signal or light, and no person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising, provided nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department.

#### Penalty for Removal of Signs

Sec. 14. Any person who shall deface, injure, knock down or remove any sign, posted as provided in this Act shall be guilty of a misdemeanor.

#### Penalty for Violations of Act

Sec. 15. (a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Act.

(b) Any person, corporation or receiver, who violates any provision of this Act shall, upon conviction, be punished by a fine of not more than Two Hundred Dollars (\$200.00); for a second conviction within one (1) year thereafter such person, corporation or receiver, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the second conviction such person, corporation or receiver shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment. Provisions hereof with respect to imprisonment shall not be applicable to corporations, but double the fines herein provided for may be imposed against them in lieu of imprisonment.

#### State Highway Patrolmen

Sec. 16. To insure the adequate enforcement of this Act and all other laws relating to vehicles and their use on the public highways, the State Highway Department is hereby authorized to and shall employ one hundred twenty (120) State Highway Patrolmen, in which shall be included all License and Weight Inspectors now authorized by Law, who shall be charged with the duty of strictly enforcing

said Laws. Included in said number shall be one (1) Chief, five (5) Captains, five (5) Lieutenants, five (5) Sergeants, and one hundred four (104) Privates. There shall also be employed one (1) Secretary, two (2) Stenographers, two (2) Typists, and four (4) File Clerks. All salaries shall be fixed by the Legislature and paid in twelve (12) equal monthly installments, and sufficient funds are hereby appropriated out of, and the Highway Commission is hereby authorized to use sufficient money out of the State Highway Fund to pay for equipment, and all reasonable and necessary expenses for the proper functioning of said State Highway Patrol, including the establishment and maintenance of a Training School for State Highway Patrolmen. It is further provided, that before a State Highway Patrolman is permanently appointed, he shall take a course consisting of at least seven weeks' training in this school. Said patrolmen when appointed shall be given a Commission signed by the Chairman and one other member of the State Highway Commission and attested by the Chief of the Department, and anywhere in this State they shall be charged primarily with the duty of enforcing all the State Laws relating to vehicles and traffic on the public highways; and they are also vested with all the rights and powers of peace officers, to pursue and arrest any person for any offense when said person is found on the highway. All such persons appointed to the office of Highway Patrol in this State shall before entering upon the duties of such office take and subscribe to the oath as prescribed in the Constitution of this State and shall make and execute a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars, payable to the Governor of this State and his successors in Office, with two or more good and sufficient sureties, conditioned that he will fairly and faithfully perform all the duties as may be required of him by law and that he will fairly and impartially enforce the law of this State and that he will pay over any and all moneys or turn over any and all property to the proper person legally entitled to same that may come into his possession by virtue of such Office. Said bond shall not be void for the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor for any person or persons to impersonate a State Highway Patrolman or to use any badge or operate any vehicle with the words "State Highway Patrol," "State Highway Police" or any other wording on such badge or vehicle that would cause anyone to believe that such person or persons were State Highway Patrolmen, except officers duly appointed by the State Highway Department.

Law Enforcement Division of Highway Department

Sec. 16a. The State Highway Patrol, License and Weight Inspectors, Headlight Division and any other Law Enforcement Agencies

now in existence or hereafter created in connection with the Highway Department shall be known as the Law Enforcement Division of the Highway Department. This Division shall be under the Chief of the Highway Patrol as the Executive Head who shall work directly under and be responsible to the Highway Commission only.

Employees' Oath Against Political Activity

Sec. 16a-1. Each and every employee regardless of designation of name as mentioned in this Act shall be required to take a special oath, swearing that so long as he is connected with the Highway Department he will not take any part in promoting the candidacy of any candidate for public office, by contributing his time, influence or contribute any money or valuable thing, but nothing shall be construed as denying any citizen the right to cast his individual vote for candidates for public office.

Discharge From Employment for Violations

Sec. 16a-2. Any person guilty of violating the provisions of Section 16a-1 shall be discharged from employment by the State and shall not be eligible to hold office under this Act for a period of five years.

Night Duties of Highway Patrol

Sec. 16a-3. A reasonable number of the Highway Patrol shall be assigned at least in part to night duty.

[Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42; Acts 1931, 42nd Leg., p. 278, ch. 164, § 1; Acts 1931, 42nd Leg., p. 507, ch. 282, §§ 1 to 6, 8, 10, 11; Acts 1933, 43rd Leg., p. 45, ch. 20; Acts 1935, 44th Leg., p. 757, ch. 328, § 2; Acts 1941, 47th Leg., p. 86, ch. 71, §§ 1 to 5; Acts 1941, 47th Leg., p. 144, ch. 110, § 12; Acts 1945, 49th Leg., p. 218, ch. 162, § 1; Acts 1945, 49th Leg., p. 394, ch. 256, § 2; Acts 1947, 50th Leg., p. 138, ch. 81, § 1; Acts 1947, 50th Leg., p. 997, ch. 421, § 138; Acts 1949, 51st Leg., p. 376, ch. 200, § 3; Acts 1949, 51st Leg., p. 870, ch. 469, § 1; Acts 1951, 52nd Leg., p. 189, ch. 116, § 1; Acts 1951, 52nd Leg., p. 248, ch. 146, §§ 1, 1½; Acts 1953, 53rd Leg., p. 438, ch. 126, § 1; Acts 1953, 53rd Leg., p. 501, ch. 179, § 1; Acts 1953, 53rd Leg., p. 798, ch. 324, § 2; Acts 1953, 53rd Leg., p. 892, ch. 368, § 1; Acts 1955, 54th Leg., p. 347, ch. 68, § 1; Acts 1955, 54th Leg., p. 522, ch. 158, § 1; Acts 1957, 55th Leg., p. 332, ch. 151, § 1; Acts 1959, 56th Leg., p. 160, ch. 94, § 1; Acts 1959, 56th Leg., p. 1109, ch. 504, § 1; Acts 1963, 58th Leg., p. 455, ch. 161, § 2, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 123, ch. 50, § 1, eff. Sept. 1, 1965; Acts 1969, 61st Leg., p. 219, ch. 87, § 1, eff. April 18, 1969; Acts 1971, 62nd Leg., p. 87, ch. 49, § 1, eff. April 5, 1971; Acts 1971, 62nd Leg., p. 1376, ch. 363, § 1, eff. May 25, 1971; Acts 1973, 63rd Leg., p. 1614, ch. 579, §§ 1, 2, eff. Aug. 27, 1973.]

Repeal of Conflicting Laws

*Acts 1965, 59th Leg., p. 298, ch. 130, §§ 1, 2 repealed article 6701d, section 106(a) to the extent, and only to the extent, of its conflict with Acts 1965, 59th Leg., p. 123, ch. 50 (S.B. No. 3) which, inter alia, amended section 3(c) of this article relating to lengths of motor vehicles, truck-tractors, trailers and combinations thereof, and repealed all other laws and parts of laws in conflict with Chapter 50 (S.B. No. 3) to the extent of such conflict.*

**Art. 6701d-12. Weight of Vehicles Transporting Ready-Mix Concrete**

Vehicles used exclusively to transport ready-mix concrete may be operated upon the public highways of this state with a tandem axle load not to exceed thirty-six thousand (36,000) pounds, a single axle load not to exceed twelve thousand (12,000) pounds and a gross load not to exceed forty-eight thousand (48,000) pounds, provided that where the vehicle is to be operated with a tandem axle load in excess of thirty-two thousand (32,000) pounds, the owner of such vehicle shall first file with the State Highway Department a surety bond in the principal sum as fixed by the State Highway Department, which sum shall not be set at a greater amount than Ten Thousand Dollars (\$10,000.00) for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of thirty-two thousand (32,000) pounds; such bond shall be in an amount to be fixed by the State Highway Department and shall be subject to the approval of the State Highway Department.

[Acts 1953, 53rd Leg., p. 747, ch. 293, § 1; Acts 1955, 54th Leg., p. 390, ch. 109, § 1.]

**Art. 6701d-13. Length of Vehicles Transporting Poles, Piling or Unrefined Timber**

Sec. 1. Notwithstanding other provisions of the statutes governing the length of motor vehicles and combinations thereof which may be operated over the highways and roads, it shall be lawful to operate such vehicles and combinations not to exceed ninety (90) feet in length including the load where such vehicles and combinations are used exclusively for transporting poles, piling or unrefined timber from the point of origin of such timber (the forest where such timber is felled) to a wood processing mill. No such vehicles and combinations as covered by the provisions of this Act shall be permitted to travel in excess of one hundred and twenty-five (125) miles from their point of origin to destination or delivery point.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset as defined by law.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas.<sup>1</sup>

Sec. 3a. Subsection (d), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended by Section 3, Chapter 282, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 827a, Vernon's Texas Penal Code),<sup>2</sup> does not apply to a vehicle covered by this Act insofar as that subsection prescribes limits on the extension of the load beyond the rear of the vehicle.

[Acts 1955, 54th Leg., p. 354, ch. 73; Acts 1965, 59th Leg., p. 1454, ch. 641, § 1, eff. June 17, 1965; Acts 1967, 60th Leg., p. 760, ch. 315, §§ 1, 2, eff. May 27, 1967.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

<sup>2</sup> Transferred; see, now, article 6701d-11, § 3(d).

**Art. 6701d-14. Length of Vehicles Transporting Electric Power Transmission Poles; Fee; Time of Operation**

Sec. 1. Notwithstanding other provisions of the Statutes governing the length of motor vehicles and combinations thereof and the provisions of the Statutes controlling the distance which a load may extend beyond the front or rear of a vehicle or combination of vehicles which may be operated over the highways and roads, it shall be lawful to operate such vehicles and combinations thereof where the combined length of the vehicle or combination of vehicles and its load does not exceed seventy-five (75) feet in length and where such vehicles or combinations thereof are used exclusively for the transport of poles required for the maintenance of electric power transmission and distribution lines; provided, however, the operator of any such vehicle or combination of vehicles must pay to the State Highway Department the sum of One Hundred and Twenty Dollars (\$120) per calendar year.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset, as defined by law, and at a rate of speed not greater than thirty-five (35) miles per hour; and provided further, that there shall at all times be displayed at the extreme rear end of the load carried on such vehicles a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas.<sup>1</sup>

[Acts 1959, 56th Leg., p. 483, ch. 212.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

**Art. 6701d-15. Length of Oil Well Servicing Units**

Sec. 1. For the purposes of this Act, an "oil well servicing unit" shall mean a complete well servicing unit, equipped with a derrick, or mast pole, which is permanently mounted on the chassis of a motor vehicle, and which vehicle provides all the necessary power for the operation of said unit.

Sec. 2. Notwithstanding other statutes governing the length of motor vehicles which may be operated over the highways and roads, it shall be lawful to operate oil well servicing units not to exceed forty (40) feet in length.

Sec. 3. The width, height, and gross weight of each such oil well servicing units shall conform to the requirements of Chapter 42, Acts of the Forty-first Legislature, Second Called Session, 1929, as last amended by Section 1 of Chapter 402, Acts of the Fifty-seventh Legisla-

ture, Regular Session, 1961 (codified as Article 827a of the Revised Penal Code of Texas).<sup>1</sup>

[Acts 1963, 58th Leg., p. 153, ch. 93.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

**Art. 6701d-16. Movement of Oversize or Overweight Oil Well Servicing and Drilling Machinery**

**Purpose of Act**

Sec. 1. The provisions of this Act shall be cumulative of all other laws regulating the operation of vehicles and the movement of machinery on the highways of this state, it being the express intent of this Act to provide an optional procedure for the issuance of permits for the movement of oversize or overweight oil well servicing and/or oil well drilling machinery and equipment.

**Permits; Designation of Routes**

Sec. 2. When any person, firm or corporation, desires to operate over any road or highway under the jurisdiction of the State Highway Department any vehicle which is a piece of fixed load mobile machinery or equipment used for the purpose of servicing, cleaning out, or drilling oil wells, and when such vehicle cannot comply with one or more of the restrictions set out in Sections 3 and 5 of Acts 1929, 41st Legislature, 2nd Called Session, Chapter 42, page 72, as amended (Article 827a, Vernon's Annotated Penal Code),<sup>1</sup> the State Highway Department may, as an alternative to any other procedure authorized by law, upon application, issue a permit for the movement of such vehicle, when the Department is of the opinion that the same may be moved without material damage to the highway or serious inconvenience to highway traffic. Provided, however, that all cities and towns having a state highway within their limits may designate to the State Highway Department the route within the city or town to be used by said vehicles operating over the state highway. When so designated, the route shall be shown on all maps routing said vehicles by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on state highways for such vehicles within cities or towns. No fee, permit or license shall be required by any city or town for movement of said vehicles on the route of a state highway designated by the State Highway Department or on said special route designated by a city or town.

<sup>1</sup> Transferred; see, now, article 6701d-11, §§ 3, 5.

**Necessity of Registration of Vehicles**

Sec. 3. Prior to issuing any permit for the movement of such vehicles, said vehicles must have been registered under Acts, 1929, 41st Legislature, 2nd Called Session, Chapter 88, as amended (Article 6675a, Vernon's Annotated Civil Statutes)<sup>1</sup> for the maximum gross weight applicable to such vehicles under Section 5, Acts, 1929, 41st Legislature, 2nd Called Session, Chapter 42, page 72, as amended (Article

827a, Vernon's Penal Code),<sup>2</sup> or shall have the distinguishing license plates as provided in Paragraph (c) of Section 2, Acts 1929, 41st Legislature, 2nd Called Session, Chapter 88, as added by Acts 1961, 57th Legislature, Regular Session, Chapter 259, page 554, as amended,<sup>3</sup> if applicable to said vehicles.

<sup>1</sup> See article 6675a-1 et seq.

<sup>2</sup> Transferred; see, now, article 6701d-11, § 5.

<sup>3</sup> Article 6675a-2, par. (c).

**Rules and Regulations; Forms and Procedures; Violations; Fees**

Sec. 4. The State Highway Commission shall formulate rules and regulations regarding the issuance of such permits including, but not limited to, the forms and procedures to be used in applying for same; conditions with regard to route and time of movement and special requirements as to flags, flagmen and warning devices; the fees to be collected and deposited in the State Highway Fund; whether a particular permit shall be for one trip only, or for a period of time to be established by the Commission; and such other matters as the Commission may deem necessary to carry out the provisions of the Act. The failure of an owner or his representative to comply with any rule or regulation of the Commission or with any condition placed on his permit shall render the permit void and, immediately upon such violation, any further movement over the highways of the oversize or overweight vehicles, shall be in violation of existing laws regulating the size and weight of vehicles on public highways.

It is recognized that the movement of such overweight and oversize vehicles is a privilege not accorded to every user of the highway system, and it is logical and proper that the fees to be charged for special transportation permit be sufficient to provide that the permittee pay the administrative costs incurred in the processing and issuing of the permits, pay for the added wear on the highways in proportion to the reduction of service life, and for the special privilege of transporting a more hazardous load over the highways thus compensating for the economic loss to the operators of vehicles in regular operation due to necessary delays and inconveniences occasioned by these types of vehicle movements. It is, therefore, declared to be the policy of the Legislature that in formulating such rules and regulations and in establishing such fees, the Commission shall consider and be guided by:

- a. The state's investment in its highway system;
- b. The safety and convenience of the general traveling public;
- c. The amount of registration or license fee previously paid on the vehicle for which the permit is desired, and the amount of such fees paid by vehicles operating within legal limits; and
- d. The suitability of roadways and sub-grades on the various classes of high-

ways of the system, variation in soil grade prevalent in the different regions of the state and the seasonal effects on highway load capacity as well as the highway shoulder design and other highway geometrics and the load capacity of the highway bridges.

#### Damages to Highways

Sec. 5. The issuance of a permit for an oversize or overweight movement shall not be a guarantee by the Department that the highways can safely accommodate such movement, and the owner of any vehicle involved in any oversize or overweight movement, whether with or without permit, shall be strictly liable for any damage such movement shall cause the highway system or any of its structures or appurtenances.

#### Determination as to Whether Vehicle Subject to Registration; License Plates

Sec. 6. With respect to oil well servicing, oil well clean out, and/or oil well drilling machinery or equipment, the State Highway Department may, if determined by it to be necessary or expedient for the proper administration of the laws of this state regarding the registration and licensing of motor vehicles, establish criteria for determining whether a vehicle of the specific type described in this Section is subject to registration under Article 6675a, Revised Civil Statutes, or eligible for the distinguishing license plate provided for in Paragraph (c) of Section 2, Acts 1929, as added by Acts of 1961, 57th Legislature, Chapter 259, page 554, as amended,<sup>1</sup> and on the basis of such criteria, said Department is authorized to determine whether such vehicle is or is not subject to registration under Article 6675a. Provided, however, that no vehicle heretofore authorized by the State Highway Department to operate without registration under the provisions of Article 6675a shall hereafter be required to register under the provisions thereof. For all purposes under this Section 6 of this Act, oil well servicing, oil well clean out and oil well drilling machinery or equipment shall mean only those vehicles constructed as a machine used solely for servicing, cleaning out, and/or drilling oil wells, and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for such purpose or purposes.

<sup>1</sup> Article 6675a-2, par. (c).

#### Application of Act

Sec. 7. Nothing in this Act shall be construed to include or apply to any person, firm or corporation authorized by the Railroad Commission of Texas to operate as a carrier for compensation or hire over the public highways of this state, whether or not all the operations of such person, firm or corporation are performed under such certificate, permit or authority granted by the Commission.

[Acts 1963, 58th Leg., p. 492, ch. 179.]

#### Art. 6701d-17. Length of Vehicles Transporting Poles or Pipe

Sec. 1. Notwithstanding other provisions of the statutes governing the length of motor vehicles and combinations thereof and the provisions of the statutes controlling the distance which a load may extend beyond the front or rear of a vehicle or combination of vehicles which may be operated over the highways and roads, it shall be lawful to operate such vehicles and combinations thereof where the combined length of the vehicle or vehicles and its load does not exceed sixty-five (65) feet in length and where such vehicles or combinations thereof are used exclusively for the transportation of poles or pipe.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset as defined by law and there shall at all times be displayed at the extreme rear end of the load carried on such vehicles a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Sec. 3. The width, height, length and weight of each vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas,<sup>1</sup> and nothing in this Act shall be construed to repeal any other provisions of the statutes other than the necessity to secure a permit from the Texas Highway Department to operate a combination of vehicles hauling pipe or poles.

[Acts 1971, 62nd Leg., p. 20, ch. 8, eff. Feb. 26, 1971.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

#### Art. 6701d-18. Special Permits for Unladen Lift Equipment Exceeding Weight and Width Limits

Notwithstanding other provisions of the statutes governing the weight and width of motor vehicles which may be operated over the highways and roads of Texas, the State Highway Department may, on application, issue annual permits for a fee of \$50 each to authorize the movement of unladen lift equipment motor vehicles which because of their design for use as lift equipment exceed the maximum weight and width limitations prescribed by statute.

[Acts 1973, 63rd Leg., p. 18, ch. 14, eff. March 22, 1973.]

#### Art. 6701d-19. Cotton Truck Regulation

##### Declaration of Policy

Sec. 1. A serious traffic menace has been caused upon the public highways and public roads of this State because of the use of the highways and roads to truck a substantial part of the cotton crop, and because of the fact that most of the cotton crop of this State moves within a very short period of time. The moving of an even greater proportion of the annual cotton crop each year will increase the traffic menace upon the highways and roads of the State. The operation of cotton trucks upon the public highways and public roads of the State of Texas at the present time has resulted in an

unusual and an appalling loss of life of travelers upon the public roads and public highways of the State, has resulted in unwarranted destruction of the public highways of this State, has resulted in unwarranted and dangerous traffic congestion, has created an unusual and unwarranted traffic menace upon the public highways and public roads of the State, has created an unreasonable and unwarranted fire hazard upon the public highways and public roads of the State, and has made difficult and almost impossible the establishing and maintaining of a coordinated use of the highways by the general traveling public. It is declared to be the public policy of this State not to permit any one kind or character of truck traffic to be conducted upon the public highways and public roads of the State in such a manner as unreasonably to interfere with and unreasonably to make dangerous the use of the highways by the general traveling public in a reasonable and safe manner, or unreasonably to destroy such highways, and in order to guard against the dangers above mentioned, this law is enacted.

#### Definition of Vehicle

Sec. 2. For the purpose of this Act a "vehicle" is every mechanical device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

#### Limitation of Load

Sec. 3. It shall hereafter be unlawful for any person, firm, corporation or association of persons to operate or cause to be operated over the public highways of this State any vehicle or combination of vehicles carrying, singly or collectively, a load of more than ten (10) bales of cotton unless all of the bales of cotton carried in or on any such load shall have been compressed to a density of twenty-two (22) pounds per cubic foot or greater.

#### Enclosing Loads

Sec. 4. It shall hereafter be unlawful for any person, firm, corporation or association of persons to operate or cause to be operated any vehicle or combination of vehicles carrying singly or collectively a load of more than ten (10) square bales of compressed cotton or more than twenty (20) round bales of compressed cotton for a distance of greater than fifteen (15) miles over the public roads and public highways of this State unless said vehicle or combination of vehicles shall be equipped with a body or bodies constructed so as to completely enclose the load or loads carried thereon from the bottom, sides and ends, and unless all the floors, tops, sides and ends of such vehicle, or combination of vehicles, so enclosing such load or loads, shall be entirely constructed of wood, not less than one and one-half (1½) inches thick, or of iron, or of steel, or of a

combination of such wood and/or iron, and/or steel, to protect the load or loads from being spilled upon the roads or highways.

#### Inapplicable to Cities or Towns

Sec. 5. The provisions of this Act shall not apply to the operation of vehicles or combination of vehicles within an incorporated city or town in this State.

#### Penalty

Sec. 6. Any person, association of persons or corporation violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) and each day such vehicle or combination of vehicles is operated contrary to the provisions of this Act shall constitute a separate offense.

[Acts 1931, 42nd Leg., p. 207, ch. 121.]

#### Art. 6701d-20. Traffic Signals on State Highways Outside Cities and Towns

Sec. 1. There may be installed at such points on State Highways as may be approved and directed by the State Highway Engineer of the State of Texas, signal units to be used as a means of controlling and regulating traffic, both vehicular and pedestrian, by the use of lights placed in such units. Such lights shall consist of red lights, amber (yellow) lights and green lights. Said signal unit shall be suspended above the center of said State Highways and installed under the direction of the State Highway Engineer, or any resident engineer of the State Highway Department.

At the display of the red light all traffic approaching such displayed light shall come to a complete stop; at the display of the amber (yellow) light, traffic shall prepare to move forward, and at the display of the green light traffic shall proceed to move forward.

Sec. 2. Any person who shall fail to stop after approaching a signal unit which has been installed and is being operated when the red light signal or the amber (yellow) signal is displayed on the side of such signal toward which he is approaching, shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine in any sum not to exceed Two Hundred (\$200.00) Dollars.

Sec. 3. It shall not be necessary for the State to prove the installation of such signal units, or the approval and direction of the State Highway Engineer, but any person charged with a violation of this Act shall have the right to prove same was not so approved and installed as a defense.

Sec. 4. This Act shall not apply to, or be construed as in conflict with any city ordinance of any incorporated city or town within this State, but shall be construed as applying only to points on State Highways outside the limits of incorporated cities and towns.

[Acts 1937, 45th Leg., p. 57, ch. 35.]

**Art. 6701d-21. Speed of Vehicles on Beaches; Driving While Intoxicated****Unlawful Acts; Definitions**

Sec. 1. It shall be unlawful for any person to drive or operate any motor vehicle or other vehicle upon any beach in the State of Texas at a rate of speed in excess of twenty-five (25) miles per hour during the daytime and in excess of twenty (20) miles per hour during the nighttime, or to operate same at any time while the operator of such vehicle is intoxicated or under the influence of intoxicating liquor. The term "beach" as used in this Act means that portion of the shore adjacent to the Gulf of Mexico, or any of its inlets, bays, lagoons, sounds, channels or canals, between the high and low water marks, over which the tides ebb and flow, where persons congregate at any time, which is not a public road or a public highway within the meaning of Article 802 of the Penal Code of Texas, 1925, as amended by Chapter 507, Acts of the Regular Session of the Forty-seventh Legislature, 1941;<sup>1</sup> the term "daytime" as used in this Act shall mean the period of time beginning thirty (30) minutes before sunrise and ending thirty (30) minutes after sunset.

<sup>1</sup> Transferred; see, now, article 67017-1.

**Arrests**

Sec. 2. Any peace officer is authorized to arrest without warrant any person found violating any provision of this Act.

**Punishment**

Sec. 3. Any person convicted of violating any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine in any sum not to exceed Two Hundred Dollars (\$200), or by confinement in the county jail for any period of time not more than thirty (30) days, or by both such fine and imprisonment.

**Suspension of Drivers License**

Sec. 3a. The drivers license of any person shall be automatically suspended upon final conviction of the offense of driving or operating a motor or other vehicle while intoxicated, under this Act, as follows: Upon first conviction, for a period of six (6) months from and after the date of conviction; and upon any subsequent conviction for a period of twelve (12) months from and after the date of such conviction. Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the drivers license, the suspension thereof shall be accomplished in the manner provided in Article IV, of Chapter 173, of the Acts of the Forty-seventh Legislature, 1941.<sup>1</sup> By the term "drivers license" as used herein is meant all "operators'," "commercial operators'," and "chauffeurs'" licenses provided for in Chapter 173 of the Acts of the Forty-seventh Legislature, 1941.<sup>2</sup>

<sup>1</sup> Article 6687b, art. IV.

<sup>2</sup> Article 6687b.

**Application of Act**

Sec. 4. The provisions of this Act shall not apply to those portions of beaches which are public roads or public highways, and nothing herein shall in any manner affect or alter existing laws governing the operation of motor vehicles upon public roads and public highways of this State.

**Partial Invalidity**

Sec. 4a. If any Section or portion of this Act be held invalid or unconstitutional, such invalidity shall not affect the remaining portions of this Act, it being declared to be the intention of the Legislature to enact such portions separately.

[Acts 1949, 51st Leg., p. 804, ch. 430.]

**Art. 6701d-22. Speed of Vehicles in Parks of Counties Bordering Gulf of Mexico****Maximum Speed**

Sec. 1. No person shall drive a vehicle at a speed greater than thirty (30) miles per hour within the boundaries of any county park situated in a county that borders on the Gulf of Mexico.

**Littering of County Parks**

Sec. 2. No person shall litter any county park situated in a county that borders on the Gulf of Mexico. Littering, as used in this Act, means the discarding of garbage, paper, and other forms of refuse in any place other than officially designated refuse containers or disposal units.

**Application of Act**

Sec. 3. The provisions of this Act shall not apply to any beach, as that term is defined in Chapter 19 of the Acts of the Fifty-sixth Legislature, Second Called Session, 1959,<sup>1</sup> whenever a beach is included within the boundaries of a county park situated in a county that borders on the Gulf of Mexico.

<sup>1</sup> Article 5415d.

**Violations; Fines**

Sec. 4. Any person who violates any provision of this Act shall be fined not less than One Dollar (\$1) nor more than Two Hundred Dollars (\$200) for each offense.

[Acts 1963, 58th Leg., p. 61, ch. 41.]

**Art. 6701e. Blind and Incapacitated Pedestrians****Unlawful Use of Canes**

Sec. 1. It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry a cane or walking stick which is metallic or white in color or white tipped with red.

**Precautions by Drivers of Vehicles**

Sec. 2. Whenever a pedestrian is crossing or attempting to cross a public street or highway, at or near an intersection or crosswalk,

guided by a guide dog, or making use of a cane or walking stick which is metallic or white in color, or white tipped with red to aid his crossing, the driver of every vehicle approaching the intersection or crosswalk shall take such precautions as may be necessary to avoid injuring or endangering such pedestrian, and if injury or danger can be avoided only by bringing his vehicle to a full stop, he shall bring his vehicle to a full stop.

**Existing Rights and Privileges; Contributory Negligence**

Sec. 3. Nothing contained in this Act shall be construed to deprive any totally or partially blind or otherwise incapacitated person, not carrying such a cane or walking stick or not being guided by a dog, of the rights and privileges conferred by law upon pedestrians crossing streets or highways, nor shall the failure of such totally or partially blind or otherwise incapacitated person to carry a cane or walking stick, or to be guided by a guide dog upon the streets, highways, or sidewalks of this state, be held to constitute nor be evidence of contributory negligence.

**Punishment for Violations**

Sec. 4. Any person who violates any provision of this Act shall, upon conviction, be punished by a fine of not more than Two Hundred Dollars (\$200.00).

[Acts 1951, 52nd Leg., p. 123, ch. 76; Acts 1967, 60th Leg., p. 1156, ch. 512, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 809, ch. 364, § 2, eff. Aug. 27, 1973.]

**Art. 6701f. Speed Signs**

It shall be the duty of the State Highway Department and said Department is hereby directed to erect and maintain on the highways and roads of Texas appropriate signs showing the maximum lawful speed for commercial motor vehicles, truck tractors, trailers and semi-trailers (trucks) and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses).

[Acts 1951, 52nd Leg., p. 163, ch. 100, § 1.]

**Art. 6701g. Traffic Regulations on County Roads and Lands by Commissioners Courts**

**Authorization; Notice and Hearing on Regulations**

Sec. 1. (a) The Commissioners Court of any county in this State may regulate and restrict traffic on county roads and on other county-owned land under its jurisdiction.

(b) The Commissioners Court shall hold a public hearing before issuing any traffic regulation pursuant to this Act, and shall give advance notice of the regulation or regulations to be considered at the hearing by causing notice of the hearing to be published not less than seven days nor more than thirty days prior to the hearing in a newspaper of general circulation in the county.

**Rate of Speed; Load Limits**

Sec. 2. (a) The Commissioners Court may determine and fix the maximum, reasonable

and prudent speed at any road or highway intersection, railroad grade crossing, curve or hill, or upon any other part of a county road less than the maximum fixed by law for public highways, taking into consideration the width and condition of the surface of the road and other circumstances on the affected portion of the road, as well as the usual traffic thereon. Whenever the Commissioners Court of any county shall determine and fix the rate of speed at any such point upon any county road at a less rate of speed than the maximum fixed by law for public highways and shall declare the maximum, reasonable and prudent speed limit thereat by proper order of the court entered on its minutes, such rate of speed shall become effective and operative at said point on said highways when appropriate signs giving notice thereof are erected at such intersection or portion of the road under order of the court.

(b) The Commissioners Court may establish load limits for any road or bridge, and may authorize the county traffic officer, if one or more such officers have been appointed, or any sheriff, deputy sheriff, constable, or deputy constable, to weigh vehicles for the purpose of ascertaining whether a vehicle is loaded in excess of the prescribed limit.

**Traffic Control Devices**

Sec. 3. The Commissioners Court of any county may adopt rules and regulations consistent with this Act for the establishment of a system of traffic control devices within restricted traffic zones established on county roads and on any other property owned by such county, under its jurisdiction, and such system shall conform to the State Highway Department's manual and specifications. The Court may, pursuant to an order entered on its minutes, place, erect, install and maintain upon county roads and on any other property owned by it, within traffic zones, such traffic signal lights, stop signs, and no parking signs, as it may deem necessary for the public safety.

**Stopping, Standing or Parking**

Sec. 4. The Commissioners Court of any county with respect to roads and any other property owned by the county, under its jurisdiction, may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any road or on any property owned by the county within a restricted traffic zone where in the opinion of the Commissioners Court such stopping, standing or parking is dangerous to those using the road or the other property owned by the county or where the stopping, standing or parking of vehicles will unduly interfere with the free movement of traffic or with the necessary control of property owned by the county and its use thereof. Such signs shall be erected pursuant to an order of the Court and it shall be unlawful for any person to stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

## Injury or Removal of Signs or Devices

Sec. 5. Any person who shall deface, injure, knock down or remove any sign or traffic control device erected pursuant to an order of the Commissioners Court as provided in this Act shall be guilty of a misdemeanor.

## Punishment for Violations

Sec. 6. Any person operating a motor vehicle in violation of any order of the Commissioners Court entered pursuant to this Act or otherwise violating any provision hereof shall be guilty of a misdemeanor and shall upon conviction be punished by fine not exceeding Fifty Dollars (\$50) for the first offense; by a fine not exceeding Two Hundred Dollars (\$200) for the second offense; and by a fine not exceeding Five Hundred Dollars (\$500) or imprisonment in the county jail not to exceed sixty (60) days, or both such fine and imprisonment for each subsequent offense.

## Partial Invalidity

Sec. 7. If any portion of this Act is held unconstitutional by a Court of competent jurisdiction the remaining provisions shall nevertheless be valid the same as if the unconstitutional portion had not been part of this Act.

[Acts 1951, 52nd Leg., p. 483, ch. 302; Acts 1953, 53rd Leg., p. 575, ch. 218, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 88, ch. 39, § 1; Acts 1955, 54th Leg., p. 32, ch. 24, § 1; Acts 1971, 62nd Leg., p. 1260, ch. 318, §§ 1, 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 642, ch. 272, § 1, eff. June 11, 1973.]

Section 2 of the 1973 amendatory act provided: "If any word, phrase, clause, sentence, paragraph, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, sentence, paragraph, part, portion, or provision."

## Art. 6701h. Safety Responsibility Law

ARTICLE I—WORDS AND PHRASES  
DEFINED

## Definitions

Sec. 1. The following words and phrases, when used in this Act, shall, for the purposes of this Act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Highway" means the entire width between property lines of any road, street, way, thoroughfare, or bridge in the State of Texas not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the State has legislative jurisdiction under its police power.

2. "Judgment"—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance

or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

3. "Motor Vehicle"—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers and graders, tractor cranes, power shovels, well drillers and implements of husbandry) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

4. "License"—Any driver's, operator's, commercial operator's, or chauffeur's license, temporary instruction permit or temporary license, or restricted license, issued under Article 6687b, Texas Revised Civil Statutes, pertaining to the licensing of persons to operate motor vehicles.

5. "Nonresident"—Every person who is not a resident of the State of Texas.

6. "Nonresident's Operating Privilege"—The privilege conferred upon a nonresident by the laws of Texas pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in the State of Texas.

7. "Operator"—Every person who is in actual physical control of a motor vehicle.

8. "Owner"—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this Act.

9. "Person"—Every natural person, firm, copartnership, association or corporation.

10. "Proof of Financial Responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and in the amount of Five Thousand Dol-

lars (\$5,000) because of injury to or destruction of property of others in any one accident. The proof of ability to respond in damages may exclude the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

11. "Registration"—Registration or license certificate or license receipt or dealer's license and registration or number plates issued under Article 6675a or Article 6686, Texas Revised Civil Statutes, pertaining to the registration of motor vehicles.

12. "Department" means the Department of Public Safety of the State of Texas, acting directly or through its authorized officers and agents, except in such sections of this Act in which some other State Department is specifically named.

13. "State"—Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

## ARTICLE II—ADMINISTRATION OF ACT

Administration of Act; Appeal to Court; Stay Order;  
Proof of Financial Responsibility; Maintaining  
Proof With Department

Sec. 2. (a) The Department shall administer and enforce the provisions of this Act and may make rules and regulations necessary for its administration, and shall provide for hearings upon request of persons aggrieved by orders or acts of the Department under the provisions of this Act.

(b) Any order or act of the Department, under the provisions of this Act, may be subject to review within thirty (30) days after notice thereof, or thereafter for good cause shown, by appeal to the County Court at Law at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, or if there be no County Court at Law therein, then in the County Court of said county, or if there be no County Court having jurisdiction, then such jurisdiction shall be in the District Court of said county, and such Court is hereby vested with jurisdiction, and such appeal shall be by trial de novo. The Court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the Department, with the exception that no stay order shall be granted staying an order of suspension by the Department of Public Safety that is based on a final judgment rendered against any person in this State by a court of competent jurisdiction growing out of the use of a motor vehicle in

this State when said judgment is a subsisting final judgment and unsatisfied; further, an appeal shall not operate as a stay of any such other orders or decisions of the Department of Public Safety where the aggrieved party was involved in an accident involving a motor vehicle which he was operating if he was charged with a violation of any of the laws of the State of Texas, or any of its political subdivisions, and said complaint or indictment is pending at the time the appeal from an order or decision of the Department of Public Safety is filed, unless the aggrieved party shall file proof of financial responsibility with the Department of Public Safety as a condition precedent to the obtaining of said stay and maintain said proof of financial responsibility until dismissal of said complaint or indictment or for such period of time as provided for in Section 2(d) of this Act. If the aggrieved party shall at the time of said appeal in lieu of proof of financial responsibility file with the court and the Department of Public Safety an affidavit setting forth specific facts which would entitle the aggrieved party to an acquittal of the complaint or indictment filed against the aggrieved party, he shall be entitled to a temporary stay of the order of the Department of Public Safety without the necessity of filing proof of financial responsibility. Upon the filing of such affidavit, the cause shall take priority upon the court's docket in said Court where said complaint or indictment is pending and if the same is not tried within forty-five (45) days from the date of filing of such complaint or indictment, shall thereafter be subject to transfer to such county or District Court of an adjoining county upon the filing of a motion thereof by the aggrieved party. If within ninety (90) days from the date of the original suspension or order by the Department of Public Safety, the Department has not received a certified copy of a judgment of the court acquitting the aggrieved party, the Department of Public Safety shall again order the driver's license and the registrations of all motor vehicles registered in the aggrieved party's name suspended and from this said order of the Department of Public Safety, no appeal shall operate as a stay unless the aggrieved party files with the Department of Public Safety, as an absolute condition precedent to the obtaining of a stay, proof of financial responsibility and maintain said proof of financial responsibility until said complaint or indictment has been dismissed or if the aggrieved party has plead guilty or been convicted for the period of time provided for in Section 2(d) of this Act. Upon the disposition of said complaint or indictment either by a plea of guilty or final conviction, the aggrieved party who shall have plead guilty or been finally convicted and has previously filed proof of financial responsibility as a condition precedent to obtaining a stay from an order of suspension of the Department of Public Safety, must maintain said proof of financial responsibility with the Department of Public Safety for that

period of time provided for in Section 2(d) of this Act. If no stay order has been previously applied for prior to a plea of guilty or final conviction, the aggrieved party can obtain a stay from any order or decision of the Department of Public Safety if said party will file with the Department of Public Safety as a condition precedent to the obtaining of a stay of said order or decision proof of financial responsibility and maintain said proof of financial responsibility as provided for in Section 2(d) of this Act. Where the aggrieved party has been found not guilty to the complaint or indictment filed against him, or said complaint or indictment has been dismissed, filing of proof of financial responsibility shall not be a condition precedent to the granting of a stay from any order or decision of the Department of Public Safety, and prior filing of proof of financial responsibility with the Department of Public Safety as a condition precedent to obtaining a stay from an order or decision of the Department of Public Safety, may be withdrawn. The above provision restricting the granting of a stay order in appeals where the aggrieved party has been charged with the violation of any of the laws of the State of Texas or of any of the political subdivisions shall also limit any court in this State in any original action brought against the Department of Public Safety to enjoin or order the enforcement of any order of the Department of Public Safety issued under this Act.

(c) Trial in the court shall be de novo, with the burden of proof upon the Department, and the substantial evidence rule shall not be invoked or apply, but the same shall be tried without regard to any prior holding of fact or law by the Department, and judgment entered only upon the evidence offered at the trial by the Court. A trial by jury may be had upon proper application.

(d) Whenever a person has been convicted or pleads guilty to a violation of any of the laws of the State of Texas, or its political subdivisions, growing out of a motor vehicle accident, as specified in Section 2(b) of this Act, and said party is required to file proof of financial responsibility as a condition precedent to the obtaining of a stay of any order or decision of the Department of Public Safety, said proof of financial responsibility shall be maintained with said Department of Public Safety by said party for a period of three (3) years from date of final conviction or plea of guilty.

#### Department to Furnish Operating Record

Sec. 3. The Department shall, upon request and receipt of proper fees, furnish any person a certified abstract of the operating record of any person subject to the provisions of this Act, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage

caused by such person, the Department shall so certify.

### ARTICLE III—SECURITY FOL- LOWING ACCIDENT

#### Report Required Following Accident

Sec. 4. The operator of every motor vehicle which is in any manner involved in an accident within the State, in which any person is killed or injured or in which damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the Department. Such report, the form of which shall be prescribed by the Department, shall contain information to enable the Department to determine whether the requirements for the deposit of security under Section 5 are inapplicable by reason of the existence of insurance or other exceptions specified in this Act. Any written report of accident in accordance with Section 44, Chapter 421, Acts of the 50th Legislature, Regular Session, 1947, as last amended by Chapter 363, Acts of the 53rd Legislature, Regular Session, 1953, compiled as Article 6701d, Section 44, Vernon's Texas Civil Statutes, if actually made to the Department, shall be sufficient provided it also contains the information required herein. The Department may rely upon the accuracy of the information unless and until it has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, the owner of the motor vehicle involved in such accident shall, within ten (10) days after learning of the accident, make such report. The operator or the owner shall furnish such additional relevant information as the Department shall require.

#### Non-domiciliary of U. S.; Proof of Financial Responsibility; Impounding Vehicle

Sec. 4A. (a) Any motor vehicle operator who is not domiciled within the United States and who operates a vehicle which is in any manner involved in an accident within the State of Texas in which any person is killed or injured or in which damage to the property of any one person, not including himself, to an apparent extent of at least One Hundred Dollars (\$100) is sustained shall be taken immediately before a magistrate and there shall present proof of financial responsibility.

(b) If a person does not present proof of financial responsibility in accordance with Subsection (a), the magistrate shall enter an order directing the Department to impound the vehicle operated by the foreign domiciliary. The Department shall hold the vehicle until:

(1) a cash bond, in an amount to be determined by the magistrate, has been posted with the Department;

(2) a release has been executed by the other party or parties to the accident and the release is filed with the Department; or

(3) the Department receives certification of the entry of a final judgment of liability in the accident from a court of record.

Security; Determination of Amount; Suspension of License and Registrations; Notice; Exceptions

Sec. 5. (a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one person of at least Two Hundred Fifty Dollars (\$250), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than Two Hundred Dollars (\$200) to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department and in no event less than Two Hundred Dollars (\$200), and unless such operator and owner shall give proof of financial responsibility; provided notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 1, 2 and 3 of Subsection (c) of this Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it of correct information with respect to said matters.

(c) This section shall not apply under the conditions stated in Section 6 nor:

1. To such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to

his operation of motor vehicles not owned by him;

3. To any person employed by the government of the United States, when such person is acting within the scope or office of his employment;

4. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy or bond; nor

5. To any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section or under Section 7 unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; providing, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars (\$5,000) because of injury to or destruction of property of others in any one accident. The policy or bond may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

6. Wherever the word "bond" appears in this section or this Act, it shall mean a bond filed with and approved by the Department of Public Safety.

## Further Exceptions to Requirement of Security

Sec. 6. The requirements as to security, proof of financial responsibility and suspension in Section 5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. To the operator or the owner of a motor vehicle legally parked or legally stopped at a traffic signal at the time of the accident;

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; nor

4. If, prior to the date that the Department would otherwise suspend license and registration or nonresident's operating privilege under Section 5, there shall be filed with the Department evidence satisfactory to it that the person, who would otherwise have to file security and proof, has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

## Duration of Suspension

Sec. 7. The license and registration and nonresident's operating privilege suspended as provided in Section 5 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit and file or there shall be deposited and filed on his behalf the security and proof required under Section 5 and under this Section; or

2. Two (2) years shall have elapsed following the date of such accident and evidence satisfactory to the Department has been filed with it that during such period no action for damages arising out of the accident has been instituted, provided such person files proof of financial responsibility; or

3. Evidence satisfactory to the Department has been filed with it of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of Section 6; provided, however, in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the Department shall forthwith suspend the license and registration or nonresident's operating

privilege of such person defaulting which shall not be restored unless and until

(a) Such person deposits and thereafter maintains security as required under Section 5 in such amount as the Department may then determine and files proof of financial responsibility; or

(b) Two (2) years shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this State, provided such person gives proof of financial responsibility.

## Reinstatement—Fees

Sec. 7A. Whenever a license or registration, or nonresident's operating privilege is suspended and the filing of proof of financial responsibility is, under this Article, made a prerequisite to reinstatement thereof, or to the issuance of a new license or registration, no such license or registration, or nonresident's operating privilege shall be reinstated or new license or registration shall be issued unless the licensee or registrant or nonresident, in addition to complying with other provisions of this Article, pays to the Department a fee of Ten Dollars (\$10) in addition to any other fees which may be required by law. Only one such fee shall be paid by any one person regardless of the number of licenses and registrations to be reinstated for or issued to such person in connection with such payment.

The fees paid pursuant to this Section shall be used by the Department to administer the provisions of this Article.

## Application to Non-Residents, Unlicensed Drivers; Unregistered Motor Vehicles and Accidents in Other States

Sec. 8. (a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license or registration, or is a non-resident, he shall not be allowed a license or registration until he has complied with the requirements of this Article to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

(b) When a non-resident's operating privilege is suspended pursuant to Section 5 or Section 7, the Department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such non-resident resides, if the law of such other state provides for action in relation thereto similar to that provided for in Subsection (c) of this Section.

(c) Upon receipt of certification by the Department that the operating privilege of a Texas resident has been suspended or revoked in another state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments

arising out of a motor vehicle accident or for failure to file proof of financial responsibility, the Department shall contact the official who issued the certification and request information pertaining to the specific nature of the Texas resident's noncompliance. If the alleged noncompliance is based on the failure of the Texas resident's insurance company or surety company to obtain authorization to write motor vehicle liability insurance in the other state and for failure of the insurance or surety company to execute a power of attorney directing the appropriate official in the other state to accept service on its behalf of notice or process in any action upon the policy arising out of the accident, then the Department shall not suspend the Texas resident's license and other registrations. If the evidence shows that the Texas resident's operating privilege was suspended in the other state for any other violation of another state's laws providing for suspension or revocation for failure to deposit security for the payment of judgments arising out of motor vehicle accidents or for failure to file proof of financial responsibility, under circumstances that would require the Department to suspend a nonresident's operating privilege had the accident occurred in this state, then the Department shall suspend the Texas resident's license and registrations. The suspension shall continue until the resident furnishes evidence of his compliance with the law of the other state relating to the deposit of security and proof of financial responsibility.

#### Form and Amount of Security

Sec. 9. The security required under this Article may be by cash deposit or by bond written by an insurance company duly authorized to execute surety bonds in this State in the amount the Department may require or in such other form and in such amount as the Department may require but in no case less than Two Hundred Dollars (\$200) nor in excess of the limits specified in Section 5 in reference to the acceptable limits of a policy. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Department or the State Treasurer of the State of Texas, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident and the same motor vehicle.

The Department may reduce the amount of security ordered in any case within six (6) months after the date of the accident if, in its judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of Section 10.

#### Custody, Disposition and Return of Security

Sec. 10. "Cash" security deposited in compliance with the requirements of this Article shall be placed by the Department in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than two (2) years after the date of such accident, or within two (2) years after the date of deposit of any security under Subdivision 3 of Section 7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Department has been filed with it that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with Subdivision 4 of Section 6, or whenever, after the expiration of two (2) years from the date of the accident, or within two (2) years after the date of deposit of any security under Subdivision 3 of Section 7, the Department shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

#### Matters Not to be Evidence in Civil Suits

Sec. 11. Upon the filing of the report required by Section 4, the action taken by the Department pursuant to this Article, the findings, if any, of the Department upon which such action is based, nor the security or proof of financial responsibility filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

### ARTICLE IV—PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

#### Courts to Report Non-Payment of Judgments and Convictions

Sec. 12. (a) Whenever any person fails within sixty (60) days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this State, to forward to the Department immediately after the expiration of said sixty (60) days, a certified copy of such judgment.

(b) If the defendant named in any certified copy of a judgment reported to the Department is a non-resident, the Department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the State of which the defendant is a resident.

(c) The clerk of the court, or the judge of a court which has no clerk, in which any conviction for violation of a motor vehicle law is ren-

dered, or in which a person charged with violation of a motor vehicle law has pleaded guilty or forfeited bail, shall forward immediately to the Department a certified copy of the judgment, order or record of other action of the court. This copy shall be prima-facie evidence of the conviction, plea or other action stated.

**Suspension for Non-Payment of Judgments; Exceptions; Filing Evidence of Insurance and Original Policy**

Sec. 13. (a) Upon the receipt of a certified copy of a judgment, the Department shall forthwith suspend the license and all registrations and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this Section and in Section 16 of this Act.

(b) If the judgment creditor consents in writing, in such form as the Department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Department, in its discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in Section 16, provided the judgment debtor furnishes proof of financial responsibility.

(c) Notwithstanding any other provision of this Act any person whose license, registration or nonresident's operating privilege has been suspended, or is about to be suspended or shall become subject to suspension under this Article, may relieve himself from the effect of the judgment by filing with the Department satisfactory evidence that there was in effect at the time of the accident out of which the judgment arose a policy of liability insurance covering the operation of the motor vehicle involved and filing with the Department an affidavit stating that at the time of the accident upon which the judgment has been rendered he was insured, that the insurer is liable to pay such judgment, and the reason, if known, why the insurance company has not paid the judgment. He shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the Department may require to show that the loss, injury, or damage for which the judgment was rendered, was covered by the policy of insurance.

If the Department is satisfied from such papers that the insurer was authorized to issue the policy of insurance in this State at the time of issuing the policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts provided in this Article, the Department shall not suspend the license, registration or nonresident's operating privilege, or if already suspended, shall reinstate them.

Any person whose license, registration or nonresident's operating privilege has heretofore been suspended under the provisions of

this Article may take advantage of this Section.

**Suspension to Continue Until Judgments Paid and Proof Given**

Sec. 14. (a) Such license, registration and non-resident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in Sections 13 and 16 of this Act.

(b) A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this Article.

**Payments Sufficient to Satisfy Requirements**

Sec. 15. Judgments herein referred to shall, for the purpose of this Act only, be deemed satisfied:

1. When Ten Thousand Dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

2. When, subject to such limit of Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person, the sum of Twenty Thousand Dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two (2) or more persons as the result of any one accident; or

3. When Five Thousand Dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this Section.

**Installment Payment of Judgments—Default**

Sec. 16. (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Department shall not suspend a license, registration or a non-resident's operating privilege, and shall restore any license, registration or non-resident's operating privi-

lege suspended following non-payment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Department shall forthwith suspend the license, registration or non-resident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this Act.

**Suspension of Registration for All Vehicles; Duration; Subsequent Proof of Financial Responsibility**

Sec. 17. (a) Whenever the Department, under any law of this State, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the Department shall also suspend the registrations for all motor vehicles registered in the name of such person, and whenever the Department shall receive record of a plea of guilty to any offense the conviction for which the Department is required to suspend or revoke the license of any person, the Department shall immediately suspend the registrations for all motor vehicles registered in the name of such person, except that the Department shall not suspend any such registrations, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Whenever the Department under any law of this State, suspends or revokes the license of any person upon receiving record of a conviction or suspends the registrations of any person upon receiving record of a plea of guilty, and such person was not the owner of the motor vehicle used at the time of the violation resulting in the conviction or the plea of guilty, the Department shall also suspend the license and all registrations in the name of the owner of the motor vehicle so used, if such vehicle was operated with such owner's permission or consent at the time of the violation unless such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by any such person.

(c) Licenses and registrations suspended or revoked under this Section shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the Motor Vehicle Laws of this State and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(d) If a person is not licensed but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for (or pleads guilty to

any such offense) any offense requiring the suspension or revocation of license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall thereafter be issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(e) Whenever the Department suspends or revokes a nonresident's operating privilege by reason of a conviction, forfeiture of bail or a plea of guilty, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

**Alternate Methods of Giving Proof**

Sec. 18. Proof of financial responsibility when required under this Act with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

1. A certificate of insurance as provided in Section 19 or Section 20; or
2. A bond as provided in Section 24; or
3. A certificate of deposit of money or securities as provided in Section 25; or
4. A certificate of self-insurance, as provided in Section 34, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

**Certificate of Insurance as Proof**

Sec. 19. (a) Proof of financial responsibility may be furnished by filing with the Department the written certificate of any insurance company duly authorized to write motor vehicle liability insurance in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(b) No motor vehicle shall be or continue to be registered in the name of any person re-

quired to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

**Certificate Furnished by Non-Resident as Proof**

Sec. 20. (a) The non-resident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Department a written certificate or certificates of an insurance company authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate are registered, or if such non-resident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this Act, and the Department shall accept the same upon condition that said insurance company complies with the following provisions with respect to the policies so certified:

1. Said insurance company shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State;

2. Said insurance company shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance company not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Department shall not thereafter accept as proof any certificate of said company whether theretofore filed or thereafter tendered as proof, so long as such default continues.

**Motor Vehicle Liability Policy Defined**

Sec. 21. (a) A "motor vehicle liability policy" as said term is used in this Act shall mean an owner's or an operator's policy of liability insurance, certified as provided in Section 19 or Section 20 as proof of financial responsibility, and issued, except as otherwise provided in Section 20, by an insurance company duly authorized to write motor vehicle liability insurance in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

1. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. Shall pay on behalf of the insured named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, all sums which the insured shall become legally obligated to pay as damages arising

out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and Five Thousand Dollars (\$5,000) because of injury to or destruction of property of others in any one accident. The policy may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall pay on behalf of the insured named therein all sums which the insured shall become legally obligated to pay as damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Act.

(e) Such motor vehicle liability policy shall not insure:

1. Any obligation for which the insured or any company as his insurer may be held liable under any workmen's compensation law;

2. Any liability on account of bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law; nor

3. Any liability because of injury to or destruction of property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. The liability of the insurance company with respect to the insurance required by this Act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance company and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance company to make payment on account of such injury or damage;

3. The insurance company shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in Subdivision 2 of Subsection (b) of this Section;

4. The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Act shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this Section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance company for any payment the insurance company would not have been obligated to make under the terms of the policy except for the provisions of this Act.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one (1) or more insurance companies which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

#### Notice of Cancellation or Termination of Certified Policy

Sec. 22. When an insurance company has certified a motor vehicle liability policy under

Section 19 or a policy under Section 20, the insurance so certified shall not be canceled or terminated until at least five (5) days after a notice of cancellation or termination of the insurance so certified shall be received in the office of the Department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

#### Act Not to Affect Other Policies

Sec. 23. (a) This Act shall not be held to apply or to affect policies of motor vehicle insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Act, may be certified as proof of financial responsibility under this Act.

(b) This Act shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

#### Bond as Proof

Sec. 24. (a) Proof of financial responsibility may be furnished by filing a bond with the Department, accompanied by the statutory recording fee of the County Clerk to cover the cost of recordation of the notice provided for herein, and with at least two (2) individual sureties each owning real estate within this State, not exempt under the Constitution or laws of the State of Texas, and together having equities equal in value to at least twice the amount of such bond. Such real estate shall be scheduled in the bond approved by a judge of a court of record, and shall be certified by the tax assessor and collector of the county where the property is situated as being free from any tax liens. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancelable except after five (5) days written notice is received by the Department, but cancellation shall not prevent recovery with respect to any right or cause of action arising prior to the date of cancellation. Such bond shall constitute a lien in favor of the State upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond. Notice to that effect, which shall include a description of the real estate scheduled in the bond, shall be filed by the Department in the office of the County Clerk of the county where such real estate is situated. Such notice shall be accompanied by the statutory fee for the services of the County Clerk in connection with the recordation of such notice, and the County Clerk or his deputy, upon receipt of such notice, shall acknowledge and

cause the same to be recorded in the lien records. Recordation shall constitute notice as provided by the statutes governing the recordation of liens on real estate.

(b) If a judgment, rendered against the principal on such real estate bond, shall not be satisfied within sixty (60) days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the persons who executed such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond, which foreclosure action shall be brought in like manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate.

#### Money or Securities as Proof

Sec. 25. (a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him Twenty-five Thousand Dollars (\$25,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of Twenty-five Thousand Dollars (\$25,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Department shall not accept such certificate, unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of this Act, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

#### Owner May Give Proof for Others

Sec. 26. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the Department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The Department shall designate the restrictions imposed by this Section on the face of such person's license.

#### Substitution of Proof

Sec. 27. The Department shall consent to the cancellation of any bond or certificate of

insurance or the Department shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this Act.

#### Other Proof May be Required

Sec. 28. Whenever any proof of financial responsibility filed under the provisions of this Act no longer fulfills the purposes for which required, the Department shall for the purpose of this Act, require other proof as required by this Act and shall suspend the license and all registrations or any nonresident's operating privilege pending the filing of such other proof.

#### Duration of Proof—When Proof May be Cancelled or Returned

Sec. 29. The Department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Department shall direct and the State Treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this Act as proof of financial responsibility, or the Department shall waive the requirement of filing proof, in any of the following events:

1. At any time after five (5) years from the date such proof was required when, during the five-year period preceding the request, the Department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished; or

2. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

3. In the event the person who has given proof surrenders his license and registration to the Department;

Provided, however, that the Department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within two (2) years immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Department.

Whenever any person whose proof has been cancelled or returned under Subdivision 3 of this Section applies for a license or registration within a period of five (5) years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such five-year period.

#### ARTICLE V—VIOLATION OF PROVISIONS OF ACT—PENALTIES

##### Transfer of Registration to Defeat Purpose of Act Prohibited

Sec. 30. If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name until the Department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this Act. Nothing in this Section shall in any wise affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this Section.

##### Surrender of License and Registration

Sec. 31. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this Act, shall have been cancelled or terminated or who shall neglect to furnish other proof upon request of the Department, shall return his license and registration to the Department within ten (10) days after receiving notice from the Department in writing, either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at the last address supplied to the Department by the licensee, which notice shall be presumed to be complete upon the expiration of nine (9) days after such is deposited in the United States mail. If any person shall fail to return to the Department the license or registration as provided herein, the Department shall forthwith direct any employee of the Department to secure possession thereof and to return the same to the Department. The Director of the Department of Public Safety, or a person designated by him, may file a complaint in any court of competent jurisdiction under Subsection (d) of Section 32 against any person whom he has reason to believe has wilfully failed to return license or registration as required herein. Proof of the giving of notice in either such manner as hereinabove set out may be made by the certificate of any employee of the Department that such notice was prepared in the regular course of business and placed in the United States mail as a part of the regular organized activity of the Department, or, if given in person, by certificate of the employee

of the Department, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.

##### Other Violations—Penalties

Sec. 32. (a) Failure to report an accident as required in Section 4 shall be punished by a fine not in excess of Twenty-five Dollars (\$25), and in the event of injury or damage to the person or property of another in such accident, the Department shall suspend the license of the person failing to make such report, or the non-resident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the Department may fix.

(b) Any person who gives information required in a report or otherwise as provided for in Section 4, knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned for not more than one year, or both.

(c) Any person whose license or registration or non-resident's operating privilege has been suspended or revoked under this Act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this Act, shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not exceeding six (6) months, or both.

(d) Any person wilfully failing to return license or registration as required in Section 31 shall be fined not more than Two Hundred Dollars (\$200).

(e) Any person who shall violate any provision of this Act for which no penalty is otherwise provided shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not more than ninety (90) days, or both.

(f) Any person who is required to maintain proof of financial responsibility under this Act and who, during the period financial responsibility is required to be maintained, drives any motor vehicle owned by him upon any highway or knowingly permits any motor vehicle owned by him to be operated by another upon any highway, except as permitted under this Act, when proof of financial responsibility is not in force, shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not exceeding six (6) months, or both.

(g) Any case now or hereafter pending on the docket of any court involving prosecution under any provision of this Act shall be given precedence on the docket of such court and prosecution shall proceed with all due diligence.

## ARTICLE VI—GENERAL PROVISIONS

## Exceptions

Sec. 33. This Act shall not apply with respect to any motor vehicle owned by the United States, the State of Texas or any political subdivision of this state, or any municipality therein except as provided in Section 35, nor to the officers, agents or employees of the United States, the State of Texas, or any political subdivision of the state, while driving said vehicle in the course of their employment; provided, however, that the operator of every motor vehicle specified herein shall comply with the provisions of Section 4 of this Act; nor, except for Sections 4 and 26 of this Act, with respect to any motor vehicle which is subject to the requirements of Articles 911a (Sec. 11) and 911b (Sec. 13) of the Revised Civil Statutes of Texas; provided, however, that nothing in this Act shall be construed so as to exclude from this Act its applicability to taxicabs, jitneys, or other vehicles for hire, operating under franchise or permit of any incorporated city, town or village.

## Self-Insurers

Sec. 34. (a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Department as provided in Subsection (b) of this Section.

(b) The Department may, in its discretion, upon the application of a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five (5) days notice and a hearing pursuant to such notice, the Department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty (30) days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

## Assigned Risk Plan

Sec. 35. Subject to the provisions of Article 5.10, Texas Insurance Code of 1951, as amended, insurance companies authorized to issue motor vehicle liability policies in this state may establish an administrative agency and make necessary reasonable rules in connection therewith, relative to the formation of a plan and procedure to provide a means by which insurance may be assigned to an authorized insurance company for a person required by this Act to show proof of financial responsibility for the future and who is in good faith entitled to motor vehicle liability insurance in this state but is unable to secure it through ordinary methods; or, in amounts not to exceed the limits prescribed in Section 21(b)2 of this law, for any unit of government within the State of Texas which, acting in good faith, is unable to secure motor vehicle liability insur-

ance in this state through ordinary methods; and may establish a plan and procedure for the equitable apportionment among such authorized companies of applicants for such policies and for motor vehicle liability policies, including, but not limited to, voluntary agreements by insurance companies to accept such assignments. When any such plan has been approved by the State Board of Insurance, all insurance companies authorized to issue motor vehicle liability policies in the State of Texas shall subscribe thereto and participate therein.

The State Board of Insurance, in addition to the provisions prescribed by Subchapter A, Chapter 5, Texas Insurance Code of 1951, as amended, may determine, fix, prescribe, promulgate, change, and amend rates or minimum premiums normally applicable to a risk so as to apply to any and every assignment such rates and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith the experience, physical or other conditions of such risk of the person or municipality applying for insurance under any such plan.

## Disposition of Fees

Sec. 36. All fees and charges required by this Act shall be remitted without deduction to the Department at Austin, Texas, and all such fees so collected shall be deposited in the Treasury of the State of Texas to the credit of the Operator's and Chauffeur's License Fund established under Article 6687b, Texas Revised Civil Statutes. In addition to statutory recording fees of county clerks required in Section 24, any filing with, certification or notice to the Department in compliance with any of the provisions of this Act, or request for certified abstract of operating record required in Section 3, except report of accident required in Section 4, shall be accompanied by a fee of Five Dollars (\$5) for each transaction. Statutory fees required by the State Highway Department in furnishing certified abstracts or in connection with suspension of registrations, or such statutory fees which shall become due the State Treasurer for issuance of certificates of deposits required in Section 25, shall be remitted from such Fund.

## Appropriation

Sec. 37. There is hereby appropriated out of the Operator's and Chauffeur's License Fund such money as may be necessary for the purpose of defraying the expenses of this Act through the biennium ending August 31, 1953, not to exceed the sum of Three Hundred Thousand Dollars (\$300,000) for the fiscal year ending August 31, 1952 and not to exceed the sum of Two Hundred Thousand Dollars (\$200,000) for the fiscal year ending August 31, 1953. So much money as is necessary to administer this Act shall be used for the employment of necessary clerical and administrative help and for defraying the necessary expenses incident to travel, rental and any judicial hearings relative to court review, and including printing of

all necessary forms required by this Act, and including the purchase through bids taken by the Board of Control of all necessary furniture, fixtures and equipment of any nature; provided the number of employees and the salaries of each shall be consistent with the number of employees and the salaries of each as fixed by the Legislature in the Biennial Departmental Appropriation Bill for like service. The Director of the Department shall prepare a budget covering operations through August 31, 1953, and submit the same for approval of the Legislative Budget Board and no warrants may be issued by the Comptroller until the same shall have been approved. Such budget shall be itemized.

#### Method of Disbursements

Sec. 38. All disbursements made hereunder to the Department shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission or the Director, and such vouchers shall be accompanied by itemized sworn statements of the expenditures for which they are issued.

#### Act Supplemental to Motor Vehicle Laws

Sec. 39. This Act shall in no respect be considered as a repeal of the motor vehicle laws of this State but shall be construed as supplemental thereto.

#### Past Application of Act

Sec. 40. This Act shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to the effective date of this Act.

#### Act Not to Prevent Other Process

Sec. 41. Nothing in this Act shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

#### Constitutionality

Sec. 42. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

#### Short Title of Act

Sec. 43. This Act may be cited as the Texas Motor Vehicle Safety-Responsibility Act.

[Acts 1951, 52nd Leg., p. 1210, ch. 498; Acts 1963, 58th Leg., p. 1320, ch. 506, §§ 1 to 22, eff. Jan. 1, 1964; Acts 1965, 59th Leg., p. 298, ch. 131, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 1636, ch. 703, §§ 1, 2, eff. Jan. 1, 1966; Acts 1969, 61st Leg., 2nd C.S., p. 59, ch. 8, §§ 1, 2, eff. Sept. 19, 1969; Acts 1969, 61st Leg., p. 1467, ch. 433, § 1, eff. June 4, 1969; Acts 1971, 62nd Leg., p. 2389, ch. 744, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2366, ch. 944, §§ 1 to 4, eff. Aug. 30, 1971.]

### Art. 6701i. Brake Fluids; Marketing Regulated; Penalties

#### Definitions

Sec. 1. (a) The term "brake fluid" as used herein shall mean the liquid medium through which force is transmitted in the hydraulic brake system of any motor vehicle operated upon the highways of this state.

(b) The term "package" as used herein means the immediate container in which the brake fluid is packed for sale but does not include a carton or wrapping containing several packages, nor a tank car or truck.

#### Prohibition

Sec. 2. After January 1, 1958, no person shall sell, hold for sale, offer for sale, distribute or add to the hydraulic brake system of a motor vehicle in this state, any brake fluid which is misbranded or which has not first been approved for sale in Texas by the Department of Public Safety of the State of Texas in accordance with this Act.

#### Misbranding

Sec. 3. A brake fluid shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) Unless the package in which it is packed for sale bears a label or imprint containing in clear and legible type:

(1) The name and address of the manufacturer, packer, seller or distributor;

(2) The words "brake fluid" and the designation "heavy duty";

(3) An accurate statement of the net contents in terms of liquid measure.

#### Standards and Specifications

Sec. 4. The Department of Public Safety of the State of Texas, hereinafter called the Department, is hereby directed, after public hearing held not more than thirty (30) nor less than fifteen (15) days after the publication in a newspaper of general circulation in this state of notice of the time, place and purpose of such hearing, to adopt rules and regulations establishing such minimum standards and specifications for brake fluids as will promote the public safety in the operation of motor vehicles in this state. Any rules and regulations adopted hereunder may be amended after notice and hearing as herein provided.

#### Approval

Sec. 5. Any manufacturer, packer or distributor, or their agents or representatives, desiring to market any brake fluid in the State of Texas shall first furnish to the Department such sample of the fluid as it may require for testing purposes, and contemporaneously, pay a filing fee of Fifty Dollars (\$50.00) and present in writing to the Department an application

for approval of said fluid for marketing in Texas, and within thirty (30) days from the date such sample is furnished the Department shall cause such tests to be made as may be necessary to determine whether or not such fluid conforms to the Standards and Specifications provided for in Section 4 hereof, and may submit any such sample to the University of Texas which is hereby designated as an official testing agency, with a request that it be tested as to conformity with the requirements of the law and the regulations of the Department. If such fluid is found to conform with such Standards and Specifications, the Department, within such thirty (30) days, shall issue to Applicant written evidence of its approval of such fluid. If such fluid is found not to conform with such Standards and Specifications, the Department, within such thirty (30) days, shall issue to the applicant written evidence of its disapproval of such fluid, and, within thirty (30) days of the date of such disapproval, said applicant may appeal to any District Court of Travis County from the decision of the Department. Such appeal shall be a trial de novo, as such term is commonly used and intended in an appeal from the justice court to the county court.

All filing fees collected hereunder shall be paid by the Department to the State Treasury to be deposited into the Motor Vehicle Inspection Fund, to be used, or so much thereof as may be necessary, for the administration of this Act, and for such use they are hereby appropriated, and the balance thereof, if any, shall remain in the Motor Vehicle Inspection Fund and may be used for the purposes otherwise established by law for the use of such fund.

#### Enforcement

Sec. 6. (a) Any misbranded or unapproved brake fluid which is sold, held for sale or offered for sale within this state shall be liable to be proceeded against in any county or district court in any county of the state where it may be found, by the county or district attorney for such county, and seized for confiscation by process of libel for condemnation. If, following seizure, the article is condemned it shall, after entry of decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasury; provided, that the article shall not be sold contrary to the provisions of this Act; and provided further, that upon payment of costs and execution and delivery of a good and sufficient bond, to be approved by the court, conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(b) Any person violating any provision of this Act shall be fined not more than One Thousand Dollars (\$1,000.00) or be confined in jail not more than six (6) months.

[Acts 1957, 55th Leg., p. 463, ch. 224.]

Art. 6701j. Repealed by Acts 1967, 60th Leg., p. 777, ch. 327, § 10, eff. May 30, 1967

Art. 6701j-1. Texas Traffic Safety Act of 1967

#### Short Title

Sec. 1. This Act may be cited as the Texas Traffic Safety Act of 1967.

#### Legislative Intent: Authority of the Governor

Sec. 2. (a) The establishment, development, and maintenance of a program of traffic safety in Texas is a vital governmental purpose and function of the State and its legal and political subdivisions.

(b) The Governor is responsible for preparing and administering a statewide traffic safety program designed to reduce traffic accidents and the resulting deaths, injuries, and property damage. The Governor may employ personnel necessary to administer this Act.

#### The Statewide Traffic Safety Program

Sec. 3. The statewide traffic safety program shall include, but not be limited to:

(a) Administration by the Governor through appropriate agencies of a program of driver education and training for Texas;

(1) Setting minimum standards by published rules and regulations for classroom instruction, training in driving skills, personnel qualifications for instructors, program content, and supplementary materials and equipment, which shall allow for innovation and experimentation on a controlled basis, not necessarily following established standards;

(2) Providing a means for continuing evaluation of the effects of all approved programs for the purpose of identifying practices most conducive to preventing traffic accidents;

(3) Providing for contracts between the governing bodies of centrally located independent school districts or other suitable public and private agencies and the State to provide for approved driver education and training programs; and

(4) Instruction offered pursuant to any contract must be offered to all applicants over fifteen (15) years of age;

(b) Plans and methods for improving driver licensing, accident records, vehicle registration and title, traffic engineering, vehicle inspection, manpower, police traffic supervision, traffic courts, highway design and uniform traffic laws;

(c) Plans for local traffic safety programs by political and legal subdivisions of the State, if the programs are approved by the Governor and conform with the uni-

form standards promulgated under the Highway Safety Act of 1966.<sup>1</sup>

<sup>1</sup> See 23 U.S.C.A. § 401 et seq.

#### Research and Development

Sec. 4. The Governor is authorized to cooperate with the Federal Government and with any political or legal subdivision of the State in research designed to aid in traffic safety and to accept any federal funds available for this purpose.

#### Cooperation of State Agencies: Local Authority

Sec. 5. (a) All departments, agencies, and institutions of the State, and all officers and employees of the State, when requested by the Governor, shall cooperate in all activities of the State consistent with the purposes stated and authority granted in this Act and the functions of their office or employment.

(b) Political and legal subdivisions of the State are authorized to cooperate with and contract with the State and with each other and with private persons in the establishment, development, and maintenance of a statewide traffic safety program. These political and legal subdivisions may expend any funds made available under this Act or from any other source for activities incident to the performance of any part of the program and may contract and pay for personal services and property to be used in the program or activities incident to the program.

#### Funds: Grants in Aid

Sec. 6. (a) The Governor shall receive on behalf of the State for the implementation of this Act all funds made available from the United States under the Highway Safety Act of 1966,<sup>1</sup> or any other federal Act.

(b) The State may accept and expend gifts, grants, or donations of money or property from private sources to implement this Act.

(c) There is created a special fund in the State Treasury called the Traffic Safety Fund. All funds received from any source to implement this Act shall be placed in the Traffic Safety Fund and shall be expended with State funds for the implementation of this Act in the manner in which other State money is expended.

(d) Grants in aid for governmental purposes and payments to discharge contractual obligations may be made to legal and political subdivisions of the State to carry out any duties and activities which are part of a statewide traffic safety program created, developed, and maintained under this Act. For the implementation of this Act, contractual payment may be made from the Traffic Safety Fund for services rendered and property furnished by private persons and by agencies which are not political and legal subdivisions of the State.

(e) All payments from the Traffic Safety Fund shall be in accordance with the terms of this Act and rules and regulations promulgated by the Governor.

<sup>1</sup> See 23 U.S.C.A. § 401 et seq.

#### Responsibilities of Governor

Sec. 7. (a) The Governor shall make rules and regulations for the administration of this Act, including rules, regulations, procedures, and statements of policy governing grants in aid and contractual relations.

(b) The Governor shall allocate such funds as may be appropriated by the Legislature in the General Appropriations Act to implement the purposes of this Act.

Sec. 8. [Amends art. 6687b, sec. 15].

#### Severability Clause

Sec. 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

#### Repealer

Sec. 10. Chapter 502, 55th Legislature, Regular Session, 1957, as amended (Article 6701j, Vernon's Texas Civil Statutes), is repealed.

[Acts 1967, 60th Leg., p. 777, ch. 327, eff. May 30, 1967.]

#### Art. 6701k. Vehicle Equipment Safety Commission

##### Creation of Commission; Composition

Sec. 1. There is hereby created within the Governor's office a commission to be known as the "Vehicle Equipment Safety Commission." Said commission shall be composed of such employees as are, in the opinion of the Governor, necessary to carry out the provisions of this Act, and shall furnish from among its members the representation for the State of Texas on the Vehicle Equipment Safety Commission established by the Vehicle Equipment Safety Compact.

##### Adherence to Safety Compact Agreements

Sec. 2. The Governor is hereby authorized to declare the adherence of this state to safety compact agreements with any state in order to:

(1) Promote uniformity in regulation of and standards for vehicle equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes.

##### Safety Compact Agreement; Regulations Relating to Vehicle Equipment Safety; Provisions of Compact

Sec. 3. The safety compact agreement authorized in Section 2 of this Act shall provide for the adoption by this state of rules, regulations or codes relating to vehicle equipment safety in the manner contemplated by Article

V subsection (e) of the Vehicle Equipment Safety Compact, and shall provide substantially the following:

## VEHICLE EQUIPMENT SAFETY COMPACT

### ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

### ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

### ARTICLE III. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle

Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the commission, and together with the Treasurer shall be bonded in such amount as the commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the commission shall elect a Secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director with the approval of the commission, or the commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional program of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivision.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the Governor and Legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

#### ARTICLE IV. RESEARCH AND TESTING

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equip-

ment-related highway accidents or the mitigation of equipment-related highway safety problems.

#### ARTICLE V. VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements of restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or its Statutes provide, the approval of the Legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the Legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursu-

ant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

#### ARTICLE VI. FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the Legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares, and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III(h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III(h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by

duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### ARTICLE VII. CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission, or in its behalf, for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

#### ARTICLE VIII. ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

#### ARTICLE IX. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a Statute repealing the

same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[Acts 1963, 58th Leg., p. 354, ch. 134, eff. Aug. 23, 1963.]

#### Art. 6701l-1. Intoxicated Driver; Penalty

Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

[1925 P.C.; Acts 1935, 44th Leg., 1st C.S., p. 1654, ch. 424, § 1; Acts 1937, 45th Leg., p. 108, ch. 60, § 1; Acts 1941, 47th Leg., p. 819, ch. 507, § 1; Acts 1953, 53rd Leg., p. 480, ch. 167, § 1.]

#### Art. 6701l-2. Subsequent Offense of Driving While Intoxicated

Any person who has been convicted of the misdemeanor offense of driving or operating an automobile or other motor vehicle upon any public road or highway in this state, or upon any street or alley within an incorporated city, town or village, while intoxicated or under the influence of intoxicating liquor, and who shall thereafter drive or operate an automobile or other motor vehicle upon any public road or highway in this state, or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating li-

quor, shall for each and every subsequent such violation be guilty of a felony; and upon conviction shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Thousand (\$5,000.00) Dollars or confinement in the county jail not less than ten (10) days nor more than two (2) years, or by both such fine and imprisonment, or by confinement in the state penitentiary not to exceed five (5) years.

[Acts 1941, 47th Leg., p. 819, ch. 507, § 2; Acts 1951, 52nd Leg., p. 813, ch. 457, § 1.]

#### Art. 6701l-3. Reckless or Intoxicated Driving by Minors

Sec. 1. Any minor who has reached his or her fourteenth (14th) birthday but has not reached his or her seventeenth (17th) birthday and who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, in a reckless manner, at an excessive rate of speed, or while under the influence of intoxicating liquors, as hereinafter defined in this Act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Dollar (\$1) nor more than Fifty Dollars (\$50).

Sec. 2. (a) Any minor who drives any vehicle in willful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner so as to endanger or be likely to endanger a person or property shall be guilty of reckless driving.

(b) Any minor who operates a motor vehicle at a speed in excess of the maximum speed allowable under existing law shall be guilty of speeding.

(c) Any minor who drives or operates an automobile or any other vehicle while such person is intoxicated or under the influence of intoxicating liquors shall be guilty of driving or operating a motor vehicle while under the influence of intoxicating liquors.

Sec. 3. Provided that for good cause shown, and when it shall appear to the satisfaction of the court that the ends of justice and the best interest of the public as well as the defendant will be subserved thereby, the courts of the State of Texas having original jurisdiction of such criminal actions shall have the power after conviction or plea of guilty to suspend the imposition of such fine and may place the defendant on probation for a period of ninety (90) days.

Any such minor placed on probation shall be under the supervision of such court.

Sec. 4. Nothing contained in this Act shall be construed to repeal or affect any other Statutes regulating the powers and duties of Juvenile Courts; the provisions of this Act shall be cumulative with all other Acts on this subject.

Sec. 5. If any clause, sentence, section or portion of this Act shall be held invalid or unconstitutional, such holding shall not affect

the remaining clauses, sections, or portions of this Act, and the Legislature declares it would have enacted the remaining portions with the invalid or unconstitutional portions omitted. [Acts 1951, 52nd Leg., p. 786, ch. 436.]

**Art. 6701l-4. Driving by Certain Minors While Intoxicated; Traffic Violations**

Sec. 1. Any male minor who has passed his 14th birthday but has not reached his 17th birthday, and any female minor who has passed her 14th birthday but has not reached her 18th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949,<sup>1</sup> while under the influence of intoxicating liquor, or who drives or operates an automobile or any other motor vehicle in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, Acts of the 41st Legislature, Second Called Session, 1929 (Article 827a, Vernon's Texas Penal Code),<sup>2</sup> except Section 9a thereof; Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes); Chapter 430, Acts of the 51st Legislature, Regular Session, 1949, (Article 827f, Vernon's Texas Penal Code);<sup>3</sup> and Articles 795<sup>4</sup> and 801,<sup>5</sup> Texas Penal Code of 1925.

Sec. 1a. No such minor may plead guilty to any offense described in Section 1 of this Act except in open court before the judge. No such minor shall be convicted of such an offense or fined as provided in this Act except in the presence of one or both parents or guardians having legal custody of the minor. The court shall cause one or both parents or guardians to be summoned to appear in court and shall require one or both of them to be present during all proceedings in the case. However, the court may waive the requirement of the presence of parents or guardians in any case in which, after diligent effort, the court is unable to locate them or to compel their presence.

Sec. 2. No such minor, after conviction or plea of guilty and imposition of fine, shall be committed to any jail in default of payment of the fine imposed, but the court imposing such fine shall have power to suspend and take possession of such minor's driving license and retain the same until such fine has been paid.

Sec. 3. If any such minor shall drive any motor vehicle upon any public road or highway in this state or upon any street or alley within the limits of any corporate city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, without having a valid driver's license authorizing such

driving, such minor shall be guilty of a misdemeanor and shall be fined as set out in Section 1 hereof.

Sec. 4. The offenses created under this Act shall be under the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty herein affixed, and shall not be under the jurisdiction of the Juvenile Courts; but nothing contained in this Act shall be construed to otherwise repeal or affect the statutes regulating the powers and duties of Juvenile Courts. The provisions of this Act shall be cumulative of all other laws on this subject.

Sec. 5. Chapter 436, Acts of the 51st Legislature, Regular Session, 1949,<sup>6</sup> is hereby repealed, but the repeal thereof shall not exempt from punishment any person who may have previously violated such repealed law, and persons convicted of a violation thereof shall be punished as therein provided.

[Acts 1957, 55th Leg., p. 736, ch. 302; Acts 1967, 60th Leg., p. 1086, ch. 476, § 1, eff. Aug. 28, 1967.]

<sup>1</sup> Article 6701d-21.

<sup>2</sup> Transferred; see, now, article 6701d-11.

<sup>3</sup> Transferred; see, now, article 6701d-21.

<sup>4</sup> Repealed; see, now, article 6701d, § 185.

<sup>5</sup> Repealed by Penal Code of 1973.

<sup>6</sup> Probably legislative intention to repeal "chapter 436, Acts of the 52nd Legislature, Regular Session 1951" [Penal Code (1925) art. 802d; now, article 6701l-3] as recited in title of this Act.

**Art. 6701l-5. Chemical Tests for Intoxication; Implied Consent; Evidence**

Sec. 1. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of this Act, to a chemical test, or tests, of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. Any person so arrested may consent to the taking of any other type of chemical test, or tests, to determine the alcoholic content of his blood, but he shall not be deemed, solely on the basis of his operation of a motor vehicle upon the public highways of this state, to have given consent to any type of chemical test other than a chemical test, or tests, of his breath. The test, or tests, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor.

Sec. 2. If a person under arrest refuses, upon the request of a law enforcement officer, to submit to a chemical breath test designated by the law enforcement officer as provided in Section 1, none shall be given, but the Texas Department of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe

the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the breath test upon the request of the law enforcement officer, shall set the matter for a hearing as provided in Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), if, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle on the highway while under the influence of intoxicating liquor at the time of the arrest by the officer, (2) that the person was placed under arrest by the officer at such time and before offering the person an opportunity to be tested under the provisions of this Act, and (3) that such person refused to submit to the test upon request of the officer, the Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for the period ordered by the court, but not to exceed one (1) year. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period ordered by the court, but not to exceed one (1) year. Provided, however, that should such person be found "not guilty" of the offense of driving while under the influence of intoxicating liquor or if said cause be dismissed, then the Director of the Texas Department of Public Safety shall in no case suspend such person's driver's license; or, in the event that proceedings had been instituted resulting in the suspension of such person's driver's license, then the Director of the Texas Department of Public Safety shall immediately reinstate such license upon notification of such acquittal or dismissal by the county clerk of the county in which the case was pending. Notification to the Director of the Texas Department of Public Safety shall be made by certified mail.

Sec. 3. (a) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle and while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by chemical analysis of his blood, breath, urine, or any other bodily substance, shall be admissible and if there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) Chemical analysis of the person's breath, to be considered valid under the provisions of this section, must be performed according to methods approved by the Texas Department of Public Safety and by an individual possessing

a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certificates shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

(c) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw blood for the purpose of determining the alcoholic content therein. The sample must be taken by a physician or in a physician's office or hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of breath specimens. The person drawing blood at the request of a law enforcement officer under the provisions of this Act, or hospital where that person is taken for the purpose of securing the specimen, shall not be held liable for damages arising from the request of the law enforcement officer to take the specimen as provided herein, provided the blood was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample. Breath specimens must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

(d) The person tested may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing administer a chemical test, or tests, in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test, or tests, taken at the direction of the law enforcement officer.

(e) Upon the request of a person who has submitted to a chemical test, or tests, at the request of a law enforcement officer, full information concerning the test, or tests, shall be made available to him or his attorney.

(f) If for any reason the person's request to have a chemical test for intoxication is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

Sec. 4. Appeals from all actions of the department under this Act in suspending, denying, or refusing to issue a license shall be governed by Chapter 173, Acts of the 47th Legis-

lature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1969, 61st Leg., p. 1468, ch. 434, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2340, ch. 709, §§ 1, 2, eff. June 7, 1971.]

#### Art. 6701m-1. Inscription on State Vehicle

There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word "Texas," followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00). Provided, however, State-owned vehicles under control and custody of the Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Department of Corrections, the Texas Parks and Wildlife Department, Agencies and Branches of Government for whom appropriations are made under Article VI of the General Appropriations Act, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

[1925 P.C.; Acts 1931, 42nd Leg., p. 373, ch. 219, § 1; Acts 1969, 61st Leg., p. 569, ch. 188, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1653, ch. 466, § 1, eff. Aug. 30, 1971.]

#### Art. 6701m-2. Identification of City and County-Owned Vehicles and Heavy Equipment

On every city or county-owned motor vehicle and piece of heavy equipment, there shall be printed upon each side the name of the city or county, followed in letters of not less than two (2) inches high by the title of the department

or official having the custody of the vehicle or piece of heavy equipment, and the inscription shall be in a color sufficiently different from the body of the vehicle or piece of heavy equipment so that the lettering shall be plainly legible, and the official having control thereof shall have the wording placed thereon as prescribed herein, and whoever drives any motor vehicle or piece of heavy equipment belonging to any city or county upon the streets of any town or city or upon a public highway without the inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Provided however, that the provisions of this Section shall not apply to automobiles used by police and sheriffs' departments, which shall be unmarked at the discretion of the sheriff or the police chief. Provided further, that the provisions of this Section shall not apply to any county or counties having a population of three hundred and fifty thousand (350,000) or more, according to the last preceding Federal Census.

[Acts 1959, 56th Leg., p. 531, ch. 235, § 1.]

#### Art. 6701½. Mobile Homes; Movement of Overlength and Overwidth on Highways; Permits; Fees

A. When any person, firm, or corporation shall desire to move over a state highway a mobile home and/or a component part thereof, which in combination with the towing vehicle, is in excess of the legal length or width provided by law, the State Highway Department may, upon application, issue a permit for the movement of said equipment. Provided, however, that all cities and towns having a state highway within their limits shall designate to the State Highway Department the route within the city or town to be used by said equipment moving over the state highways. When so designated, the route shall be shown on said maps routing said equipment by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on the state highway for equipment within such cities or towns. No fee or license shall be required by any city or town for movement of said oversized mobile homes and/or component parts thereof on the route of a state highway designated by the State Highway Department or on said special route designated by a city or town.

B. The application for a permit as provided for in this Article shall be in writing and contain the following:

(1) The make and model of the mobile home, the over-all length and width, the make and model of the towing vehicle, the length and width of the towing vehicle and the over-all length and width of the combined mobile home and/or component part thereof and towing vehicle.

(2) The highway or highways over which the same is to be moved, indicating the point of origin and destination.

(3) The same shall be dated and signed by the applicant.

C. Said special permits shall be issued by the Highway Department through the agent or agents in each county designated for that purpose as set out in Article 6701a, Section 1-a.

D. There shall also accompany the application for permit a fee of Five Dollars (\$5), which fee shall be by the State Highway Department deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. Said fee shall be made by cashiers or certified check, postal or express money order.

E. Permits issued by the State Highway Department as provided for under this Article shall be substantially in the following form:

(1) It shall contain the name of the applicant and shall be dated and signed by the State Highway Engineer, a Division Engineer or a designated agent.

(2) It shall state the make and model of the mobile home and/or component part to be transported over the highways, the make and model of the towing vehicle, the combined over-all length and width of the mobile home and/or component part thereof and towing vehicle.

(3) It shall state the highway and/or highways over which the same is to be moved.

F. Said special permits shall be good for a period of ten (10) days and valid only for a single continuous movement.

G. Movements authorized by said special permits shall be made during daylight hours only.

[Acts 1957, 55th Leg., p. 138, ch. 59, § 1.]

## CHAPTER TWO. ESTABLISHMENT OF COUNTY ROADS

### Article

- 6702. "Public Roads."
- 6703. Commissioners Courts: Powers.
- 6703a. Abandoned Roads.
- 6704. Classes of Roads; Cattle Guards.
- 6705. Petition.
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- 6712. Gates.
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- 6713. Road Supervisors.
- 6714. Reports.
- 6715. Across Public Lands.
- 6716. Damage to Roads.
- 6716-1. The Optional County Road Law of 1947.

### Art. 6702. "Public Roads"

All public roads and highways not discontinued that have heretofore been laid out and es-

tablished agreeably to law are hereby declared to be public roads.

[Acts 1925, S.B. 84.]

### Art. 6703. Commissioners Courts: Powers

The commissioners court shall order the laying out and opening of public roads when necessary, and discontinue or alter any road whenever it shall be deemed expedient. No public roads shall be altered or changed except to shorten the distance from end to end, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; and said change shall be by unanimous consent of all the commissioners elected. No part of a public road shall be discontinued until a new road is first built connecting the parts not discontinued; and no entire first or second class road shall be discontinued except upon vacation or non-use for a period of three years. Said court shall assume and have control of the streets and alleys in all cities and incorporated towns in Texas which have no defacto,<sup>1</sup> municipal government in the active discharge of their official duties.

[Acts 1925, S.B. 84.]

<sup>1</sup> Probably should read "de facto."

### Art. 6703a. Abandoned Roads

Whenever the use of a county road has become so infrequent that the adjoining land owner or owners have enclosed said road with a fence and said road has been continuously under fence for a period of twenty (20) years or more, the public shall have no further easement or right to use said road unless and until said road is re-established in the same manner as required for the establishment of a new road; this Act shall not apply to roads to a Cemetery or Cemeteries; provided however, that this Act shall not apply to access roads reasonably necessary to reach adjoining land.

[Acts 1955, 54th Leg., p. 1625, ch. 525, § 1.]

### Art. 6704. Classes of Roads; Cattle Guards

The Commissioners Court shall classify all public roads in their counties as follows:

1. First class roads shall be clear of all obstructions, and not less than forty (40) feet nor more than one hundred (100) feet wide; all stumps over six (6) inches in diameter shall be cut down to six (6) inches of the surface and rounded off, and all stumps six (6) inches in diameter and under, cut smooth with the ground, and all causeways made at least sixteen (16) feet wide. No first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than forty (40) feet wide.

3. Third class roads shall not be less than twenty (20) feet wide and the causeway not less than twelve (12) feet wide;

otherwise they shall conform to the requirements of first class roads.

4. Any county in this State containing a population of less than ten thousand (10,000) inhabitants, or any county with a population of not less than twenty-seven thousand, six hundred fifty (27,650) nor more than twenty-seven thousand, six hundred eighty-five (27,685), according to the last preceding federal census, may by a majority vote of the Commissioners Court thereof authorize the construction of cattle guards across any or all of the first class, second class, or third class roads in said county, and such cattle guards shall not be classed or considered as obstructions on said roads.

The Commissioners Court of any county coming under the provisions of this Act shall provide proper plans and specifications of a standard cattle guard to be used on the roads of said county, said plans and specifications to be plainly written, supplemented by such drawings as may be necessary and shall be available to the inspection of the citizenship of such county. After said Commissioners Court provides said proper plans and specifications of a standard cattle guard to be used on the roads of said county any person constructing any cattle guard that is not in accordance with said approved plans and specifications prepared by said Commissioners Court shall be deemed guilty of obstructing said roads of said county, and the person responsible for such improper construction of said cattle guards shall be deemed guilty of a misdemeanor, and shall be fined not less than Five Dollars (\$5) nor more than One Hundred Dollars (\$100).

The Commissioners Court of any county coming under the provisions of this Act is hereby authorized and empowered to construct cattle guards on the first class, second class, and third class roads of said county and pay for same out of the Road and Bridge Funds of said county when in their judgment they believe the construction of such cattle guards to be to the best interest of the citizens of said county.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 256, ch. 178, § 1; Acts 1929, 41st Leg., p. 429, ch. 197, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 940, § 1; Acts 1953, 53rd Leg., p. 675, ch. 256, § 1; Acts 1965, 59th Leg., p. 1499, ch. 650, § 1, eff. June 17, 1965; Acts 1971, 62nd Leg., p. 1830, ch. 542, § 58, eff. Sept. 1, 1971.]

#### Art. 6705. Petition

The commissioners court shall in no instance grant an order on an application for any new road, or to discontinue an original one, or to alter or change the course of a public road, unless the applicants have given at least twenty days notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of such road. All such applications shall be by petition to the commissioners court, signed by at least eight freeholders in the precinct in which such road is desired to be made or discontin-

ued, specifying in such petition the beginning and termination of such road, provided an application to alter or change a road need not be signed by more than one freeholder of the precinct.

[Acts 1925, S.B. 84.]

#### Art. 6706. Preliminary Survey

All roads ordered to be made shall be laid out by a jury of freeholders in the county, to be appointed by the commissioners court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty. They shall make written report of their proceedings to the next term of said court, and the field notes of such survey or description of the road shall be included therein, and, if adopted, shall be recorded in the minutes of said court.

[Acts 1925, S.B. 84.]

#### Art. 6707. Notice of Appointment

When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the order appointing them within ten days after such appointment was made, indorsing on such copies the date of such order. The sheriff shall serve the same upon each juror in person, or by leaving one of said copies at his usual place of abode. The sheriff shall make such service within twenty days after he receives said copies, and shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or the cause of his failure to make the same. Any juror of view, summoned as such, who fails or refuses to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county.

[Acts 1925, S.B. 84.]

#### Art. 6708. Oath of Jury

Said jurors shall first take the following oath: "I, \_\_\_\_\_, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God."

[Acts 1925, S.B. 84.]

#### Art. 6709. Notice to Owner

Said jury shall issue a written notice of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same. Such notice shall be served upon each land owner, his agent or attorney, through whose land said road may run, at least five days before the day named therein. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the

county, once a week for four consecutive weeks, and the road may be established after four weeks publication, the cost of publishing to be paid as directed by the judgment of the court.

[Acts 1925, S.B. 84.]

#### Art. 6710. Damages to Land

Any such owner may, at the time stated in such notice, or previously thereto, but not in any event thereafter, present to the jury a written statement of the damages claimed by him, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report. If the commissioners court approves the report and orders such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken. When same are paid or secured by special deposit with the county treasurer to the credit of such owner and after notice of such payment or deposit to the owner, and if no objection is made to the jury's report, said court may proceed to have such road opened, if deemed of sufficient importance. Said owner may appeal from such assessment as in cases of appeal from judgment of justice courts, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages.

[Acts 1925, S.B. 84.]

#### Art. 6711. Neighborhood Roads

Any lines between different persons or owners of lands, any section line, or any practicable route, practicable route as used herein, shall mean a route which will not unduly inconvenience the owners or persons occupying the land through which such route shall be declared, that the Commissioners Court may agree on in order to avoid hills, mountains or streams through any and all enclosures, shall be declared a public highway on the following conditions:

1. One or more freeholders, or owners of lands, persons, firms or corporations, into whose lands there is now no public road or public means of access, who desires an access road connecting his said land with the county public road system, may make a sworn application to the Commissioners Court for an order establishing such road, designating the lines sought to be opened, and the names and residences of the person or persons affected by such proposed access road, and stating the facts which show a necessity therefor.

2. Upon the filing of such application the County Clerk shall issue a notice, reciting the substance thereof, directed to the Sheriff or any Constable of the County, commanding him to summon such landowners as may be affected by the opening of said road, naming them, to appear at

the next regular term of the Commissioners Court to contest the same, if they so desire, and to testify as to the amount of damage they will sustain, if any, by reason of the establishment of such road. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in justice courts, and shall be returned in like manner as such citation.

3. At a regular term of the court, after due service of such notice, the court may hear evidence as to the truth of such application, and if it appears that the said applicants have no means of access to their lands and premises, it may issue an order declaring the lines designated in the application, or such lines as may be fixed by the Commissioners Court, to be a public highway, and direct the same to be opened by the owners thereof and left open for a space of not less than fifteen (15) feet nor more than thirty (30) feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed nor defaced. Notice of such order shall be immediately served on such owners, and return thereon made as hereinabove provided. A copy of such order shall be filed in the Deed Records in the office of the County Clerk of said County.

4. The damages to such landowners shall be assessed by a jury of freeholders, as for other public roads, and all costs attending the proceedings in opening said road shall be paid by the County, and the Commissioners Court shall not be required to keep such road worked by the road hands as in the case of other public roads, but shall place said roads in the first instance in condition for use as access public roads.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 207, ch. 62, § 1; Acts 1953, 53rd Leg., p. 1054, ch. 438, § 1.]

#### Art. 6711a. Roads to Public Streams and Lakes

##### What May be Declared Public Highways

Sec. 1. Any lines between different persons or owners of land, any section line, any survey line, any survey subdivision line or any direct practicable route through an enclosure containing not less than five hundred (500) acres of land that the Commissioners Court or a majority thereof may agree to open in order to furnish access to public streams, lakes and bays in the Counties of Leon or Madison, may be declared public highways upon the following conditions:

##### Application for Road

Sec. 2. Ten (10) citizens of the county in which such application is filed, or one or more persons living within such an enclosure, who desire a means of access to public streams, lakes or bays in the Counties of Leon or Madi-

son where there is a distance of at least five (5) miles along the banks of said river or stream, or a distance of five (5) miles on the shore of said lake or bay not now served by a public road or highway, may make sworn application to the Commissioners Court for an order establishing such road, designating the lines sought to be opened and the names and residence of the persons or owners to be affected by such proposed roads, and stating the facts which show the necessity for such road.

#### Notice to Land Owners

Sec. 3. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to sheriff or any constable of the county, commanding him to summons such land owners, naming them, to appear at the next regular term of the Commissioners Court and show cause why said line should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in Justice Courts, and shall be returned in like manner as such citation.

#### Directing Opening of Road

Sec. 4. At a regular term of Court, after due service of such notice, if the Commissioners Court deems that the proposed road comes within the provisions of this Act and is of public importance it shall issue an order declaring the lines designated in the application, or lines fixed by the Commissioners Court, to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen (15) feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

#### Working Road

Sec. 5. The Commissioners Court shall not be required to keep any such roads worked by the road hands as in the case of other public roads.

#### Damages Assessed

Sec. 6. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all cost attending the proceeding in opening neighborhood roads, if the application is granted, shall be paid by the county.

#### Navigable Streams

Sec. 7. The lack of adequate roads for the purpose of public access to navigable streams or public lakes, or to shores of lakes or bays within tide water limits is hereby declared to create a public necessity for additional roads in the Counties of Leon or Madison, which will furnish a means of such access for the general public. "Navigable streams," as that term is used herein, are defined to be statutory naviga-

ble streams of an average width of thirty (30) feet, and public lakes are defined to be those lakes in which the State owns the beds, or reserves the right of access for its citizens for fishing, boating, hunting or other recreation.

#### Public Necessity for Road

Sec. 8. A public necessity for roads of the character herein defined is declared to exist where any existing public roads which furnish access to public rivers, lakes or bays are more than five (5) miles apart, and/or where there is an area of at least five (5) miles on any such river, stream, lake or bay without a road to furnish public access to such stream, lake or bay.

#### Order Opening Road

Sec. 9. On application being filed in accordance with Sections 1, 2, 3, 4, 5, and 6 of this Act, the Commissioners Courts of Leon and Madison Counties may issue an order opening a public road sixty (60) feet in width running parallel with and adjacent to the bank of any statutory navigable stream of this State for such distance as the Court may deem necessary, said right of way to be used for access to said public streams, and for camping purposes. The opening of highways along and adjacent to the banks of said navigable streams shall be in accordance with the terms of this Act and compensation shall be made to the owners of said lands as provided for in Section 6 of this Act.

#### Purpose of Act

Sec. 10. It is the purpose of this Act to make accessible public streams, bays, lakes and other bodies of public waters which are now fenced in and not accessible to the general public, by establishing roads and highways. Any bank of a stream and shore of a lake or bay which extends more than five (5) miles without a public highway furnishing access to the public, to said bank or shore of said stream, lake or bay is declared to be inaccessible and subject to be opened to public access under the terms of this Act.

#### Application to Leon and Madison Counties

Sec. 10-a. No provision of this Act shall be applicable to any other county in this State except to the Counties of Leon and Madison.

[Acts 1935, 44th Leg., Spec. Laws, p. 1196, ch. 33, § 1.]

#### Art. 6711b. Neighborhood Roads

Whenever the commissioners court shall duly declare the boundary lines between the lands of different persons, or any section line, or any direct line through an inclosure containing 1280 acres or more of land, a public highway in accordance with law, if a person or owner shall fail, neglect or refuse for twelve months after legal notice thereof to leave open his land free from all obstructions for fifteen feet on his side of the line designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse.

[1925 P.C.]

**Art. 6712. Gates**

The owners of land across which a third class or neighborhood road may be run, when the right of way therefor has been acquired without cost to the county, may erect gates across said road when necessary, said gates to be not less than ten feet wide and free of obstructions at the top.

[Acts 1925, S.B. 84.]

**Art. 6712a. Leaving Gates Open on Third Class Roads**

Any person placing a gate on or across any third-class road, or on or across any road such as is designated in article 836 shall be required to keep said gate and the approaches to the same in good order, and the gate shall be ten feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the same; and provide a fastening to hold said gate open until the passengers go through. Such person shall place a permanent hitching post and stile block on each side of and within sixty feet of such gate. Any person who may place a gate on or across a third-class road, or on or across any road such as is designated in article 836 who shall wilfully or negligently fail to comply with any requirement of this article shall be fined not less than five nor more than twenty dollars for each offense, and each week of such failure is a separate offense. Whoever wilfully or negligently leaves open any gate on or across any third-class road, or on or across any road such as is designated in article 836, shall be fined as above provided for.

[Acts 1925, S.B. 84.]

**Art. 6713. Road Supervisors**

Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioners precinct once each month. He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.
4. The number of mile posts and finger boards defaced and torn down.
5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor.

[Acts 1925, S.B. 84.]

**Art. 6714. Reports**

Said supervisor's report shall be submitted together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court thereafter.

[Acts 1925, S.B. 84.]

**Art. 6715. Across Public Lands**

No public road shall be opened across lands owned and used or for actual use by the State, educational, eleemosynary, or other public State institutions for public purposes and not subject to sale under the general laws of the State, without the consent of the trustees of said institution and the approval of the Governor. The roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the State, upon repayment to the county where the land is situated with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners court.

[Acts 1925, S.B. 84.]

**Art. 6716. Damage to Roads**

The county commissioner of any precinct, or county road superintendent of any county, or road supervisor, whose road is affected, may forbid the use of highways or parts thereof when from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to same, or when the bridge or culverts on same are unsafe, under the following rules:

1. Such officer shall post notices on such highways, stating the maximum load permitted and the time such use is prohibited, and same shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.
2. If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. When such complaint is filed, the judge shall set the same down for a day certain not more than three days later, and shall give written notice to such official of the day and purpose of such hearing. The judge shall hear testimony offered by the parties thereto, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order or notice, and such judgment shall be final as to the issues raised.
3. The owners, operators, drivers or movers of any vehicle, object or contriv-

ance over a public highway or bridge shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of negligent driving, operating or moving of such vehicle, or as a result of operating same at a time forbidden by said road officials. The amount of such damages may be recovered in any action at law by the county judge for the use of the county, and such recovery shall go to the benefit of the damaged road. The county attorney shall represent the county in such suit.

[Acts 1925, S.B. 84.]

#### Art. 6716-1. The Optional County Road Law of 1947

##### Short Title

Sec. 1. The short title of this Act shall be "The Optional County Road Law of 1947."

##### Adoption of Act

Sec. 2. By a majority vote of its qualified voters, any county in this state, at an election held for that purpose, may adopt the provisions of this Act for the construction and maintenance of county roads and bridges and for the expenditure of the County Road and Bridge Fund. Such question shall be submitted to the qualified voters of such county at a general or special election by the Commissioners Court of such county, upon petition of a number of qualified voters of such county equal to ten (10) per cent of the number voting for Governor at the last preceding general election in such county, not less than thirty (30) days nor more than sixty (60) days after the petition is filed with the Commissioners Court. The ballot for such election shall read:

"For the Optional County Road Law of 1947"; or

"Against the Optional County Road Law of 1947."

If there be a favoring vote at such election, the provisions of this Act shall become effective with the official proclamation of the results of such election. In like manner, a county having voted to come under the provisions of this Act may vote to abandon the provisions of this Act, but no election on the questions of adopting or abandoning the provisions of this Act shall be held oftener than every two (2) years.

##### County Road Department

Sec. 3. The construction and maintenance of county roads is vested in the county road department which shall include the Commissioners Court as the policy-determining body, the County Road Engineer as the chief executive officer, other administrative personnel, and road employes.

##### On Basis of County as Whole

Sec. 4. The construction and maintenance of county roads, the ownership and use of all county road department equipment, materials and supplies, and the administration of the county road department shall be on the basis

of the county as a whole without regard to commissioners precincts.

##### County Road Engineer; County Road Administrator

Sec. 5. The County Road Engineer shall be appointed by the Commissioners Court. He shall be a licensed professional engineer, experienced in road construction and maintenance, who shall meet the qualifications required by the State Highway Department for its county engineers. If the Commissioners Court is not able to employ a licensed professional engineer for any reason, then the Commissioners Court is authorized to employ a qualified road administrative officer, who shall be known as the County Road Administrator, to perform the duties of the County Road Engineer. The County Road Administrator shall have had experience in road building or maintenance or other types of construction work qualifying him to perform the duties imposed upon him, but it shall not be necessary that he have had any fixed amount of professional training or experience in engineering work. The County Road Administrator shall perform the same duties as are imposed upon the County Road Engineer, and all references in other Sections of this Act to the County Road Engineer shall include and apply to the County Road Administrator.

##### Salary of Engineer

Sec. 6. The County Road Engineer shall receive an annual salary not to exceed Twenty Thousand Dollars (\$20,000), the exact amount thereof to be determined by the Commissioners Court, and said salary shall be paid in twelve (12) equal monthly installments out of the Road and Bridge Fund of the county.

##### Term of Engineer; Removal

Sec. 7. The County Road Engineer shall hold his position for an indefinite term and may be removed by a majority vote of the Commissioners Court. Removal shall not become effective until thirty (30) days after he shall have been notified in writing of the intention of the Commissioners Court to remove him, and until after a public hearing on the question of his removal shall have been held, if such hearing is requested of the Commissioners Court in writing by the County Road Engineer.

##### Administrative Officer

Sec. 8. In the absence or inability of the County Road Engineer to perform his duties, the Commissioners Court may designate a qualified administrative officer to perform the duties of County Road Engineer during such absence or inability.

##### Powers of County Road Engineer

Sec. 9. The County Road Engineer shall be responsible to the Commissioners Court for the efficient and economical construction and maintenance of the county roads. He shall have the power to appoint for an indefinite term and to remove all county road department personnel, subject to the approval of the Commissioners Court. He may authorize certain

administrative personnel to employ and remove subordinates or employes under their respective direction.

**Commissioners Court**

Sec. 10. Except for the purpose of inquiry the Commissioners Court shall deal with the county road department's administrative personnel and employes through the County Road Engineer.

**Duties of Engineer**

Sec. 11. The County Road Engineer shall attend all meetings of the Commissioners Court when it sits to consider county road matters, with the right to participate in the discussions and to make recommendations. He shall see that the policies of the Commissioners Court relating to county roads are faithfully executed, supervise the administration of the county road department, and prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department. The County Road Engineer shall prepare estimates and specifications for all equipment, materials, supplies, and labor necessary for the construction and maintenance of the county roads and the operation of the county road department, serve as custodian for all equipment, materials, and supplies belonging to the county road department, prepare plans and specifications for all county road construction and maintenance, maintain cost accounting records on county road department expenditures, keep a perpetual inventory of all county road department equipment, material and supplies, and perform such other duties as the Commissioners Court may require which are consistent with this Act.

**Bond; Oath**

Sec. 12. The County Road Engineer and such other administrative personnel of the county road department as the Commissioners Court may require to do so, shall give bond in such amount and surety as may be approved by the Commissioners Court. The premiums on such bonds shall be paid by the county. The County Road Engineer shall take the official oath of office.

**Expenditures**

Sec. 13. All expenditures for the construction and maintenance of the county roads and the operation of the county road department shall be paid out of the Road and Bridge Fund strictly in accordance with annual budgeted appropriations, except that upon application of the County Road Engineer the Commissioners Court may transfer any part of any unencumbered appropriation balance for some item within the Road and Bridge Fund budget to some other item.

**Engineer as Representative of County**

Sec. 14. On projects of county road construction and maintenance let to private contractors, the County Road Engineer shall be the representative of the county in inspecting

the progress of the work. Before any claims by reason of county road construction or maintenance done by private contractors shall be ordered paid by the Commissioners Court, the County Road Engineer shall certify in writing to the correctness of the claims and shall certify that the work done conforms to the plans and specifications called for in the respective contracts.

**Purchase of Equipment and Supplies**

Sec. 15. All equipment, materials and supplies for the construction and maintenance of county roads and for the county road department shall be purchased by the Commissioners Court on competitive bids in conformity with estimates and specifications prepared by the County Road Engineer; except when upon recommendation of the County Road Engineer and when in the judgment of the Commissioners Court it is deemed in the best interest for the county to do so, purchases in an amount not to exceed One Thousand Dollars (\$1,000.00) may be made through negotiation by the Commissioners Court or the Commissioners Court's duly authorized representative, upon requisition to be approved by the Commissioners Court or the County Auditor without advertising for competitive bids. Before any claims covering the purchase of such equipment, materials and supplies and for any services contracted for by the Commissioners Court shall be ordered paid by the Commissioners Court, the County Road Engineer shall certify in writing to the correctness of the claims therefor and shall certify that the respective equipment, materials and supplies covered by the claims conform to specifications approved by him and that the same respective equipment, materials and supplies were delivered in good condition and that any road department services contracted for by the Commissioners Court have been satisfactorily performed. The provisions of this section shall not be construed to permit the division or reduction of purchases for the purpose of avoiding the requirement of taking formal bids on purchases which would otherwise exceed One Thousand Dollars (\$1,000.00).

**Partial Invalidity**

Sec. 16. If any provision of this Act shall be held to be void, such invalidity shall not affect the Act beyond the provision or section so held to be invalid, it being the legislative intention to pass the same irrespective of such provision or section so invalidated.

[Acts 1947, 50th Leg., p. 288, ch. 178; Acts 1957, 55th Leg., p. 24, ch. 17, §§ 1, 2; Acts 1957, 55th Leg., p. 371, ch. 176, § 1; Acts 1967, 60th Leg., p. 805, ch. 340, § 1, eff. June 8, 1967.]

**CHAPTER THREE. MAINTENANCE OF ROADS**

**1. OVERSEERS AND HANDS**

**Article**

- 6717 to 6728. Repealed.
- 6729. Condemnation of Road Material.
- 6730. Drains.
- 6731 to 6735. Repealed.
- 6736. Road and Bridge Funds.

## Article

## 2. ROAD COMMISSIONERS

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- 6738. Powers and Duties.
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## 1. OVERSEERS AND HANDS

Arts. 6717 to 6728. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

## Art. 6729. Condemnation of Road Material

The commissioners court may use either timber, earth, stone, gravel, or other necessary material most convenient therefor to build, re-

pair, or maintain any public road or any part of any public road in the county without regard to the location or extent thereof or the funds from which such repair or maintenance is paid. In such case the owner of any such material shall be paid a fair and just compensation therefor as may be agreed upon by the owner or his agent and the commissioners court. Should the owner and the commissioners court fail to agree upon the compensation to be paid for the material required, then the county, upon the order of said court, shall proceed to condemn the same. If such material is needed for the general system of county highways, then payment shall be made from the road and bridge fund of the county, or from the proceeds of any county issue of bonds. If such material is to be used for the benefit of any defined district or political subdivision of the county, then the cost of such material shall be paid from funds of such defined district or subdivision arising through sale of bonds or the collection of special taxes. The commissioners appointed to condemn the property shall receive two dollars for each day they may be necessarily engaged in the performance of their duties, to be paid out of the same fund from which payment is made for materials on the order of the commissioners court. Compensation awarded by said commissioners for material shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner or the county is not satisfied with the compensation awarded, he or said county may appeal therefrom as in condemnation cases; provided, the commissioners appointed to condemn such road material shall, after due hearing, fix a fair and reasonable value for such material; and if it has a market value, then such market value shall be determined and the market value fixed thereon as compensation to the owners, or if the material has no market value, then its value shall be fixed at such sum as the evidence shows the material to be reasonably worth for the purpose for which it was used. The value may be fixed either as a whole or in quantities, by the yard for earth, for sand, or broken stone, or by the perch for stone, and per tree, or per post, or per foot where trees are suitable for lumber or for timbers in such quantities as may be needed upon estimates secured by the commissioners court.

[Acts 1925, S.B. 84.]

## Art. 6730. Drains

The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side thereof. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard for the natural water flow, and with as little injury as possible to the adjacent land owners. In such cases the commissioners court shall cause the damages to such premises to be assessed and paid out of

the general revenues of the county, and in case of disagreement the same may be settled by suit as in other cases.

[Acts 1925, S.B. 84.]

**Arts. 6731 to 6735. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965**

#### **Art. 6736. Road and Bridge Funds**

All moneys appropriated by law, or by order of the commissioners court, for working public roads or building bridges, shall be expended under the order of the commissioners court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes.

[Acts 1925, S.B. 84.]

### **2. ROAD COMMISSIONERS**

#### **Art. 6737. Employment**

Each commissioners court may employ not exceeding four road commissioners, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court. Such road commissioners shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner shall first execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for the faithful performance of his duties.

[Acts 1925, S.B. 84.]

#### **Art. 6738. Powers and Duties**

A road commissioner shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and may require overseers to order out hands in any number he may designate for the purpose of opening, working or repairing roads or building or repairing bridges or culverts in his district. He shall see that all roads and bridges in his district are kept in good repair, and he shall, under the direction and control of the commissioners court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners court; and he shall be responsible for the safe-keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court.

[Acts 1925, S.B. 84.]

#### **Art. 6739. Expenditures**

He shall expend such money as may be placed in his hands by the commissioners court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners court. He shall work the convicts and such other labor as may be furnished him by the commissioners court. When he has funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer in his district to work more than five days during any one year upon the public roads, he may employ such overseer to continue his duties as such for such length of time as may be necessary, and pay him for such services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that the hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads. Said road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire.

[Acts 1925, S.B. 84.]

#### **Art. 6740. Expenditure of Road Fund**

The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property.

[Acts 1925, S.B. 84.]

#### **Art. 6741. Powers of Court**

The commissioners court may make and enforce all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this State. Said court may purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor required of citizens to build or repair the roads.

[Acts 1925, S.B. 84.]

**Art. 6742. Donations**

Commissioners court or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner.

[Acts 1925, S.B. 84.]

**3. ROAD SUPERINTENDENTS****Art. 6743. Appointment**

The commissioners court of any county subject to this law may appoint a competent person as road superintendent for such county, or one such superintendent in each commissioners precinct, as it shall determine by an order made at a regular term thereof. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this subdivision shall be sufficient. Every road superintendent shall be a qualified voter in the county or precinct for which he is appointed, and shall hold his office for two years or until removed by the commissioners court for good cause. No county shall be under the operation of this law whose commissioners court does not appoint a road superintendent or superintendents.

[Acts 1925, S.B. 84.]

**Art. 6744. Oath and Bond**

Each road superintendent shall within twenty days after his appointment take and subscribe the oath required by the Constitution, and give bond payable to and to be approved by the county judge in such sum as the commissioners court may fix, conditioned that he will faithfully perform all the duties required of him by law or the commissioners court, and that he will pay out and disburse the funds subject to his control as the law provides or said court may direct.

[Acts 1925, S.B. 84.]

**Art. 6745. Salary**

Each road superintendent shall receive such salary as the commissioners court may fix, to be paid on the order of said court at stated intervals. In counties of less than fifteen thousand inhabitants the county superintendent's salary shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants, it shall never exceed four hundred dollars per annum. Said court may suspend the salary of any superintendent whose continued services are not needed.

[Acts 1925, S.B. 84.]

**Art. 6746. Powers**

Subject to the orders of said court, each superintendent shall have general supervision over all public roads of his county or precinct, and shall superintend the laying out of new roads, the making, changing, working and repairing of roads, and the building of bridges except where otherwise contracted and over all county convicts worked on such roads, but this shall not prevent the commissioners court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of and be responsible for the safe-keeping of all tools, machinery, implements and teams placed under his control by the commissioners court and execute his receipt therefor, which shall be filed with the county clerk. He shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery unless such loss occurred without his fault, and for the wrongful or improper expenditure of any road funds coming into his hands. On leaving office, he shall deliver all such money and property to such person as the commissioners court may direct.

[Acts 1925, S.B. 84.]

**Art. 6747. Duties**

Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair, and he shall, under the direction of the commissioners court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct, and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this law, and he shall do and perform such other service as said court may require.

[Acts 1925, S.B. 84.]

**Art. 6748. Road Districts**

When said court so directs, each superintendent shall divide his county or precinct into road districts of convenient size, to be approved by said court, and define the boundaries thereof and designate the same by number. Such boundaries shall be recorded in the road minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners court.

[Acts 1925, S.B. 84.]

**Art. 6749. Repealed by Acts 1965, 59th Leg., p. 949, ch. 459, § 1, eff. Aug. 30, 1965**

**Art. 6750. Accounts and Reports**

Each superintendent shall make a sworn report to said court at each regular term thereof showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in the county or precinct, and such

other matters as the court may desire information upon, and shall make such other reports at such times as such court may require. Within ten days after collection of any money on account of the road or bridge fund he shall pay the same over to the county treasurer, taking his receipt therefor, and shall keep an accurate account thereof.

[Acts 1925, S.B. 84.]

#### Art. 6751. Powers of Court

The commissioners court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain, or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same.

[Acts 1925, S.B. 84.]

#### Art. 6752. Extra Road Force

Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners court may direct, and he shall work such roads in such manner as the commissioners court may direct, and such work shall at all times be subject to the general supervision of the commissioners court. He shall make the best contract possible for such labor or machinery, and in payment therefor he shall issue to the person entitled thereto his certificate showing the amount due, the purpose for which it was given, and upon approval by the commissioners court, a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof.

[Acts 1925, S.B. 84.]

#### Art. 6753. Contracts for Road Work

The commissioners court may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract, and advertise for bids, and may reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in such sum as said court may determine, conditioned for the faithful compliance with such contract. At the time of making such contract said court shall direct the county treasurer to pass the amount of money stipulated in such contract to

a particular fund and to keep a separate account thereof, and the same shall be used for no other purpose and can only be paid out on the order of said court.

[Acts 1925, S.B. 84.]

#### Art. 6754. Donations

The commissioners court may accept donations of money, land, teams, tools, or labor, or any other kind of property or material to aid in building or keeping up roads in the county, and said court or any road superintendent, with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent or such other person as said court may direct.

[Acts 1925, S.B. 84.]

**Arts. 6755, 6756. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965**

#### Art. 6757. Injuring Property

Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard or mile post or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby.

[Acts 1925, S.B. 84.]

**Art. 6758. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965**

#### Art. 6759. Definitions

As used in this subdivision, "road" includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and "work" and "working" includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road.

[Acts 1925, S.B. 84.]

#### Art. 6760. Law Cumulative

This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern.

[Acts 1925, S.B. 84.]

#### Art. 6761. Counties Exempt

The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempted from the provisions of this

subdivision; provided that the commissioners court of Dallas and Collin counties may accept and adopt the provisions of this law in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment, its provisions are better suited to Dallas and Collin counties than the said special laws.

[Acts 1925, S.B. 84.]

#### 4. OPTIONAL ROAD LAW

##### Art. 6762. Ex-officio Commissioners

In all counties of this state, as shown by the preceding federal census to contain as many as thirty-five thousand (35,000) inhabitants or more, the members of the Commissioners Court shall be ex officio road commissioners of their respective precincts; and under the direction of the Commissioners Court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court. They shall superintend the laying out of new roads, the making or changing of roads and the building of bridges under rules adopted by said court. Each commissioner shall first execute a bond of One Thousand Dollars (\$1,000.00) payable to and to be approved by the County Judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law, or by the Commissioners Court, and that he will account for all money or other property belonging to the county that may come into his possession.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 433, ch. 208, § 1.]

##### Art. 6763. Powers

The commissioners court shall adopt such system for working, laying out, draining and repairing the public roads as they deem best, and from time to time said court may change their plan or system of working. Said court may purchase such teams, tools and machinery as may be necessary for the working of public roads; and construct, grade, or otherwise improve any road or bridge by contract in the manner provided in the preceding subdivision of this chapter. Said court may employ any hands and teams on the public roads under such regulations and for such prices as they may deem best.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 433, ch. 208, § 1.]

##### Art. 6764. County Convicts

The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of county convicts. Said court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and may provide a reward not to exceed ten dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict

to be paid to any person other than the guard or person in charge of such convict at the time of his escape.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 433, ch. 208, § 1.]

Art. 6765. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

##### Art. 6766. To Direct Work

Each county commissioner, when acting as road commissioner, shall inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 433, ch. 208, § 1.]

Arts. 6767, 6768. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

##### Art. 6769. Law Cumulative

The provisions of this subdivision shall be cumulative of all general laws on the subject of roads, when not in conflict therewith, but in case of such conflict this law shall control. This law shall not be in operation in any county unless the commissioners court thereof in their judgment may deem it advisable, and then only by an order of said court when all the members are present, made at some regular term thereof, accepting the provisions hereof. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance of the provisions hereof shall be sufficient.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 433, ch. 208, § 1.]

##### Art. 6770. Certain Counties Excepted

The provisions of this subdivision shall not apply to the counties of Fannin, Lamar, Grayson, Collin, Dallas, and Bell.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 222, ch. 150, § 1.]

Art. 6770a. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6770a-1. Repealed by Acts 1941, 47th Leg., p. 741, ch. 462, § 2; Acts 1943, 48th Leg., p. 329, ch. 210, § 2

Art. 6770a-2. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6770a-3. Repealed by Acts 1945, 49th Leg., p. 272, ch. 201, § 1

Art. 6770a-4. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Section 2 of the Act of 1945 repealed all conflicting laws and parts of laws.

## 5. DRAINAGE

**Art. 6771. Powers**

For the purpose of this subdivision all public roads and highways that have been or may be laid out and established agreeably to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners court at any regular session thereof may cause to be constructed and maintained, as hereinafter provided, ditches, drains and water courses, hereinafter called ditches on and within the exterior lines of all public roads situated within the county sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such ditch any side, lateral, spur or branch ditch or water course necessary to the accomplishment of the purposes of this law. No ditch shall be constructed along any public road unless at the same time an outlet is constructed to a natural waterway, sufficient in capacity to carry off all water that may collect therein.

[Acts 1925, S.B. 84.]

**Art. 6772. Culverts**

No road overseer, or any court, shall, on petition or otherwise, have the power to change the natural course of any branch, creek or stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel.

[Acts 1925, S.B. 84.]

**Art. 6773. Petition**

A petition shall first be filed with the county clerk, signed by at least one hundred tax payers and voters of said county, setting forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall also separately state the name and location of each natural waterway of such county crossed by each of the first class public roads of said county, and the distance of said natural waterways one from the other along said road. Said petition shall also state the names and residences, if known, of the owners of the lands adjacent to each of said first class public roads, and with-

in one mile thereof, and, if unknown, shall so state.

[Acts 1925, S.B. 84.]

**Art. 6774. Notice of Hearing**

Upon the filing of said petition, the clerk shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners court and contest the same. One of said notices shall be posted at the courthouse door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of said court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive three dollars, and the clerk one dollar and fifty cents.

[Acts 1925, S.B. 84.]

**Art. 6775. Hearing**

At the time specified, said court shall hear and determine the petition in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable or for the public benefit, or for the best interest of the county, the court shall so order, and the order shall be entered at length upon the minutes of the court and become a part of the record thereof, and the same shall recite the time, character and manner of service of notice. If it appears therefrom that notice has been given as provided for herein, the said order shall be final. If said court refuses to adopt said drainage system, no other application therefor shall be heard for one year thereafter.

[Acts 1925, S.B. 84.]

**Art. 6776. Survey**

At the same or any succeeding term of said court after the entry of such order, said court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point. Said survey and the drainage system shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class. Nothing herein shall be construed to prohibit said court from constructing one or more ditches at the same time, as the financial condition of the county will permit.

[Acts 1925, S.B. 84.]

**Art. 6777. Survey: Report**

The surveyor shall, as soon as practicable after his employment, proceed to make such survey and system of levels, and shall cause

stakes or monuments to be placed along said line at intervals of one hundred feet, with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; and said surveyor shall also measure and establish by suitable marks, the frontage of each tract of land abutting on said road; and if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail and bottom of tie, foot of embankment, and bottom of borrow pits of all railroads. Said map, or the explanation accompanying same, shall in tabular form give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch; and shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural waterways crossed by said road, together with an estimate of total cost of the whole work. He shall also prepare detailed specifications for the execution of such project. Whenever in his opinion it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. As soon as completed, he shall file said survey, report, map, explanation and estimate with the county clerk.

[Acts 1925, S.B. 84.]

#### Art. 6778. Jury of View

At any regular or called session of the commissioners court after the filing of said report, map, explanation, specifications and estimate,

the court shall appoint a jury of five freeholders of the county who shall meet at a time and place to be specified by the said court in the order appointing them. The county clerk shall thereupon issue to said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause, should not be adopted, the court may at any succeeding term appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. Said jury shall proceed at the time and place so specified, after giving notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch and after hearing all protests, claims and remonstrances offered, they shall take the several partial estimates, and the surveyor's estimate of the total cost of the work as a basis, and shall have lines run parallel to the lines of said ditch at a distance of one mile on either side thereof, and shall set apart and apportion to each parcel of land abutting on said road and ditch, or within said parallel lines, and to each person, firm or corporation owning the same, its proportionate share of the one-half of the total cost of said ditch, taking into consideration the relative amount of benefit derived by said land from the construction thereof. They shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch or lateral ditch, is or may be constructed under the order of appointment. Before such ditch is opened said sum shall be paid on the order of the commissioners court out of the county treasury from the fund set aside for the construction of said ditch. Said jury shall make a sworn report to the commissioners court as soon as practicable after their meeting, signed by at least three of said jury, and shall return with their report an accurate and full description of each tract of land assessed by them, with the number of acres and the name of the owners thereof, and the amount assessed against each tract and the owner thereof. The jury shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such. The court shall act upon said report at the next regular or called term, and approve or reject the same; provided that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or advantageous to the public.

[Acts 1925, S.B. 84.]

#### Art. 6779. Oath of Viewers

Said jury shall first take the following oath: "I do solemnly swear that I am not directly interested in the construction of the proposed

ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God."

[Acts 1925, S.B. 84.]

#### Art. 6780. Notice of Assessments

The said jury shall issue a written notice to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served at least five days before the day named therein, by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident, agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district courts; and said notices shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view, and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners court.

[Acts 1925, S.B. 84.]

#### Art. 6781. Claims

Any person whose land may be affected by such ditch may appear before said viewers and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a written statement of any objections to, or dissatisfaction therewith, and any claim for damages which he may have sustained by reason of making said ditch or drain; and a failure to so make such objection or claim for damages or compensation shall be deemed a waiver of all claim or right thereto. All such claims or objections shall be returned to the commissioners court in connection with the report of the viewers. Any adjacent land owner may appear before and be heard by the commissioners court on his protest or remonstrance or claim against the action of said jury.

[Acts 1925, S.B. 84.]

#### Art. 6782. Appeals

Any person, firm or corporation, aggrieved by any such assessments, may appeal from the final order of the commissioners court approving the report of said jury to any proper court within the county by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing within ten days thereafter, a transcript of the proceeding had in the commissioners court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond, with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court. Appeals from an assessment of expense shall be heard upon this issue: whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. Appeals from an assessment of compensation shall be heard upon this issue: whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land.

[Acts 1925, S.B. 84.]

#### Art. 6783. Trial on Appeal

In the trial of all such appealed cases the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party. If the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages, than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners court as the judgment of said court, and thereafter the appellant shall be held for, or claim, the amount specified in said judgment.

[Acts 1925, S.B. 84.]

#### Art. 6784. Appropriation: Construction

The commissioners court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the entry of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund as may be necessary for the construction of the ditch described in the report of the jury of viewers, and shall also enter an order to the

overseers of the road adjoining said ditch or to the supervisors of the road, or to the road commissioner, commanding him to construct such ditch in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch. The court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials, belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor or commissioner, for the completion thereof; and shall authorize such overseer, supervisor or commissioner to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners court, and said order shall also show the amount of compensation to be allowed to said overseer, supervisor, or road commissioner for his services.

[Acts 1925, S.B. 84.]

#### Art. 6785. Special Overseer

The commissioners court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services.

[Acts 1925, S.B. 84.]

#### Art. 6786. List of Assessments

At the same or at any succeeding term after the entry of such order for the construction of the ditches and roadway, the commissioners court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees, number of acres covered by each assessment of expense, as made and reported by the jury of viewers and approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of each assessment and for what ditch or road the same was issued, and the tract of land on which said amount was assessed. Such certificate shall be signed by the county judge in open court, and attested under the hand and seal of the county clerk, which fact shall be noted upon the minutes of said court.

[Acts 1925, S.B. 84.]

#### Art. 6787. Assessments: Collection

All assessments, sums, and charges by said viewers, or order of court, assessed against any land and the owner thereof, shall be a lien thereon, unless prohibited by the Constitution of this State. The county judge shall deliver the certificate to the county treasurer, taking his receipt therefor, which shall be filed with

the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. If any person against whom any such certificate may be issued fails or refuses to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land foreclosed, or for a personal judgment as may be lawful.

[Acts 1925, S.B. 84.]

#### Art. 6788. Compensation

The jury of viewers shall each receive three dollars per day for their services for each day so actually engaged; and said surveyor shall receive such sum as the commissioners court may allow.

[Acts 1925, S.B. 84.]

#### Art. 6789. Private Ditch

Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct at his own cost lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this subdivision.

[Acts 1925, S.B. 84.]

#### Art. 6789a. Acquiring Right of Way for Diversion of Streams and Drainage Channels in Locating, Relocating, or Maintaining Roads

Any Commissioners' Court is hereby authorized and empowered to acquire by purchase or by condemnation any new or wider right-of-way or land not exceeding one hundred (100) feet in width for stream bed diversion and drainage channels only in connection with the locating, relocating, construction, reconstruction or maintenance of any public road, and to pay for the same out of the County Road and Bridge Fund or out of any available county funds.

[Acts 1939, 46th Leg., p. 484, § 1.]

### CHAPTER FOUR. SPECIAL ROAD TAX

#### Article

- 6790. Election.
- 6791. Election, Conduct of.
- 6792. Result of Election.
- 6793. No Bonds to Issue.

#### Art. 6790. Election

The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said terri-

tory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas, adopted in 1890. Said court may act on such petition without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district.

[Acts 1925, S.B. 84.]

#### Art. 6791. Election, Conduct of

No formal notice need be given of such election, but the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. Tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The tickets printed and to be voted shall have written or printed on them the words: "For the Tax" and "Against the Tax," and those who favor the tax shall vote the ticket "For the Tax," and those who oppose the tax shall vote the ticket "Against the Tax." The expenses of the election shall be paid for by the county. An election ordered within ninety days of a general election shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election which shall be conducted as other elections. The officers to conduct the same shall be appointed as in other cases. Only qualified voters who pay a property tax in the county or political subdivision or defined district shall be permitted to vote at such election.

[Acts 1925, S.B. 84.]

#### Art. 6792. Result of Election

If at any such election a majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commissioners court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of

property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out. If at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall be denied.

[Acts 1925, S.B. 84.]

#### Art. 6793. No Bonds to Issue

No bonds shall ever be issued under the provisions of this chapter.

[Acts 1925, S.B. 84.]

### CHAPTER FIVE. BRIDGES AND FERRIES

#### 1. BRIDGES

##### Article

- 6794. Commissioners Court: Powers.
- 6795. Toll Bridges.
- 6795a. Tunnel or Underpass Authorized in Counties of 350,000.
- 6795b. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 20,000 or More.
- 6795b-1. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 50,000 or More.
- 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico.
- 6796. Boundary Bridge.
- 6797. Tolls Assessed to Pay Bonds.
- 6797a. Interstate Bridges.
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#### 2. FERRIES

- 6798. Right to Maintain.
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## 1. BRIDGES

**Art. 6794. Commissioners Court: Powers**

The commissioners court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make necessary appropriations of money of the counties therefor.

[Acts 1925, S.B. 84.]

**Art. 6795. Toll Bridges**

When it is inexpedient for the road force to build bridges over large creeks or water courses, the commissioners court may contract with a proper person to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, vehicles, etc., passing over the same, to be granted to the contractor for such a number of years as said court may think proper, not to exceed ten years; and the builder and his successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. Before granting a license to any person to build a toll bridge, the commissioners' court shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the contractor shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon. If any person shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person so damaged may bring an action of debt against the owner or keeper of such toll bridge on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained.

[Acts 1925, S.B. 84.]

**Art. 6795a. Tunnel or Underpass Authorized in Counties of 350,000****Franchise, Authority to Grant**

Sec. 1. The Commissioners' Court situated within any County having not less than three hundred and fifty thousand (350,000) population, according to the last preceding Federal Census shall have full power and authority to grant to a person, firm or private corporation, a franchise for the construction, maintenance and operation of a toll underpass or tunnel under any stream, channel or body of water in the State of Texas and necessary approaches thereto and to enter into a contract with such person, firm and/or corporation to finance, build, construct, own, maintain, and operate such toll underpass or tunnel and approaches, with a reasonable toll charge to be agreed upon, to be levied upon or charged all railroads, persons, vehicles, cattle, motor cars and motor busses and/or other vehicles of transportation passing through said tunnel or underpass; said franchise to be granted to said person, firm or corporation for such number of years as the Court may think proper not to ex-

ceed fifty (50) years and such contract and franchise to provide that such persons, firm or corporation shall keep said tunnel and/or underpass and approaches in continuous repair during the term of said contract or franchise; the granting of said franchise shall be conditioned that the contractor shall build and keep in continuous repair the tunnel or underpass and approaches so contemplated for the term of years agreed upon, in accordance with the plans and specifications therefor set out in said contract and franchise.

**Option of County to Purchase**

Sec. 2. The Commissioners' Court may provide in said contract and franchise that the county shall have the right to purchase said tunnel and/or underpass at a time and for a price to be agreed upon in said contract or franchise.

**Regulations as to Crossing Under Navigable Stream**

Sec. 3. Said tunnel or underpass when crossing a navigable stream shall be located, built and constructed at an adequate depth below the fixed navigable depth of such navigable stream, river or channel, as may be provided by law or by the rules and regulations of the State authorities and/or Department of the United States Government having control or charge of said river, stream or channel and said franchise from the Commissioners' Court of the County wherein such tunnel or underpass is to be built, constructed, operated and maintained, shall so provide.

**Eminent Domain**

Sec. 4. The right of eminent domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land right of way or easement in land, where said land right of way or easement is necessary for the purposes of the construction of said tunnels or underpasses and approaches thereto.

**Tolls Authorized; Loan of Public Funds**

Sec. 5. Such county, through the Commissioners' Court, is hereby authorized and empowered as a part of its road and bridge system, to construct, build, acquire, own and operate an underpass or tunnel with necessary approaches and to charge tolls therefor and/or operate same upon free service or upon free and toll service, as may be provided by the Commissioners' Court, and is hereby authorized to enter into such contract or agreement relative to grants or loans of public funds by the United States Government as may be necessary to carry out the purposes of this Act.

**Partial Invalidity**

Sec. 6. The provisions of this Act shall be severable and if any of its provisions shall be held to be unconstitutional the decision so holding shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been

adopted had such unconstitutional provision not been included therein.

Repeals

Sec. 7. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

[Acts 1935, 44th Leg., 1st C.S., p. 1644, ch. 419, § 1.]

**Art. 6795b. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 20,000 or More**

Construction and Operation Authorized; Cost and Expenses

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of twenty thousand (20,000) or more, according to the last Federal Census, preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. The cost of the project shall be considered to include the cost of construction, the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; shall include the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed; provided, however, that

nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more.

Bonds; Charge Only on Revenues of Project; Approval and Registration

Sec. 2. No bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds.

Acceptance of Federal Aid; Contracts; Acquisition of Property

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent general law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. The county shall be under no obligation to accept and pay for any property condemned and shall in no event pay for same except from the proceeds derived from the sale of the revenue bonds, and in any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and rights of way through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

## Bonds; Tolls; Trust Indenture

Sec. 4. Bonds issued hereunder may be authorized by resolution at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the project and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six (6) per cent per annum, computed on average maturities according to standard tables of bond values. The bonds may be made redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas.<sup>1</sup> Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds. Prior to the issuance of definitive bonds, temporary or interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive

evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers, and duties arising upon the breach by the county of any of its duties or obligations.

<sup>1</sup> Articles 5932 to 5948 (repealed; see, now, Business and Commerce Code, § 3.101 et seq.).

## Rights of Bondholders or Trustee for Bondholders; Receiver

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter, and take possession of the project

and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

#### Board of Trustees to Manage Project

Sec. 6. The management and control of the project during such time as any of the bonds remain outstanding may by the terms of the bond resolution or trust indenture be placed in the hands of a Board of Trustees to be named therein, consisting of not more than five (5) members, to be appointed in such manner and to have such powers and duties as may be therein provided.

#### Bonds Free From Taxation

Sec. 7. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

#### Powers of Counties and of State Highway Commission

Sec. 8. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such maintenance under such provisions not inconsistent with the rights of bondholders as may be agreed to by the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for

the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

#### Refunding Bonds

Sec. 9. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

#### Repeal

Sec. 10. House Bill No. 9, Chapter 32, Acts, Fourth Called Session, Forty-third Legislature, is hereby repealed.

#### Partial Invalidity

Sec. 11. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

[Acts 1941, 47th Leg., p. 822, ch. 509; Acts 1947, 50th Leg., p. 106, ch. 73, § 1; Acts 1959, 56th Leg., p. 25, ch. 15, § 1.]

#### Art. 6795b-1. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 50,000 or More

##### Construction and Operation Authorized; Cost and Expenses

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), in, over, through or under the waters of the Gulf of Mexico or any bay or inlet open-

ing thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. Among other things, the cost of the project may include the following: the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System, that part of the project (which has not been so designated) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment

of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the issuance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended, and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall not be sold initially for less than par and accrued interest. No funds raised or to be raised by taxation in any county shall be expended on any such project extending between two (2) counties unless the Commissioners Court of such county is authorized to expend such funds by a vote of the electors qualified to vote at an election called by the Commissioners Court for such purpose. Notice of such election shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in said county, the first publication to be not less than fifteen (15) days prior to the date of said election.

**Bonds; Charge Only on Revenues of Projects; Approval and Registration; Alternative Methods; Elections**

Sec. 2. Except as expressly provided in this Section, no bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature; or

(b) A pledge of and payable from either an ad valorem tax levied out of the Road and Bridge Fund Tax authorized for counties under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of

the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust indenture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until they shall have been authorized at an election at which the question of their issuance shall have been submitted. If the bonds are to be supported by a limited ad valorem tax they must have been authorized by not less than a majority vote at an election called and held substantially in the manner prescribed for the issuance of county bonds in Chapter 1 of Title 22 of the Revised Civil Statutes of Texas as amended. If the bonds are to be supported by an unlimited tax they must have been authorized by not less than a two-thirds majority vote at an election called and held substantially in the manner prescribed for the issuance of unlimited tax county road bonds in Chapter 3 of Title 22 of the Revised Civil Statutes of Texas, as amended.

**Federal or State Aid; Contracts; Acquisition of Property**

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the Constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent General Law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. In any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the insti-

tution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and right of ways through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

**Bonds; Tolls; Trust Indenture**

Sec. 4. The bonds issued hereunder may be authorized by resolution at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the project and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six per cent (6%) per annum, computed on average maturities according to standard tables of bond values. The bonds may be redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas.<sup>1</sup> Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring

bonds. Prior to the issuance of definitive bonds, temporary or interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

<sup>1</sup> Articles 5932 to 5948 (repealed; see, now, Business and Commerce Code, § 3.101 et seq.).

#### Rights of Bondholders or Trustee for Bondholders; Receiver

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any Court of competent jurisdic-

tion to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter and take possession of the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

#### Contract or Lease Agreement

Sec. 5a. Any county proceeding hereunder after this amendment becomes effective may, within the discretion of the Commissioners Court, to the extent prescribed by the bond resolution or the trust indenture or pursuant to the provisions thereof make a contract or lease agreement under which the facilities may be operated for a period fixed therein not extending beyond the date of the maturity of the last maturing bond, by another agency, person, firm, or corporation, provided that nothing in such contract or lease shall be so interpreted as to interfere with the right of the holders of the bonds or their representatives to require proper operation and maintenance of the facilities and the payments for the benefit of the bonds as prescribed in the bond resolution or in the trust indenture.

#### Bonds Free From Taxation

Sec. 6. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

#### Powers of Counties and of State Highway Commission

Sec. 7. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided, however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such operation and

maintenance under such provisions as may be agreed to by the county which are not inconsistent with the rights of bondholders or the rights of any agency, person, firm or corporation then operating the project under lease or contract with the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward operation and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

#### Contributions by United States or by State

Sec. 7(a). The county is hereby authorized to accept from the United States Government or any of its departments or agencies or from the State of Texas or any of its departments or agencies, any contributions or assistance available from such source or sources in connection with the acquisition, construction and operation of such project and to enter into agreements with one or any of them in reference to the acquisition, construction and operation of the project.

#### Bonds as Legal Investments or Security

Sec. 7(b). All bonds issued under this law before and after this amendment shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

#### Refunding Bonds

Sec. 8. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

#### Bonds for Payment of Outstanding Toll Bridge Revenue Bonds

Sec. 8(a). When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the net revenues derived from tolls collected for the use of a causeway or bridge and which bonds are also payable from an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said bridge, and make such causeway or bridge available for the free use of the public.

#### Partial Invalidity

Sec. 9. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

[Acts 1947, 50th Leg., p. 514, ch. 304; Acts 1949, 51st Leg., p. 219, ch. 122, §§ 2 to 5; Acts 1955, 54th Leg., p. 1163, ch. 446, § 1; Acts 1967, 60th Leg., p. 292, ch. 136, § 1, eff. May 8, 1967.]

#### Art. 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico

##### Acquisition Authorized; Purchase or Condemnation

Sec. 1. Any county in this State which borders on a river between the State of Texas and

the Republic of Mexico, acting through its Commissioners Court, is hereby authorized and empowered as a part of its road and bridge system to acquire a toll bridge or bridges by construction or otherwise, and to acquire any existing toll bridge or bridges with their rights and franchises and appurtenant properties, by purchase thereof from the owner or owners thereof; either by purchase of the properties as such, or, if such toll bridge or bridges are owned by a private corporation, either by purchase from it of the properties, as such, or by purchasing the capital stock of such corporation from the owner or owners of such stock, either all of the outstanding capital stock of such corporation, or a sufficient amount thereof as required under the law for the dissolution and liquidation of such corporation, and immediately liquidating such corporation, paying the debts and obligations or liabilities thereof, and winding up its business and affairs, and causing conveyance of its properties to said county, taking the title to such stock either in the name of such county or in the name of a trustee therefor, and voting or causing such stock to be voted to carry out and accomplish such purposes, all in such manner and to such effect as to vest title to said toll bridge or bridges with all their rights, franchises and appurtenant properties in such county. The purchase and acquisition of any such properties or stock of such corporation from the owner or owners thereof shall be for such price, upon such terms and conditions, and upon such covenants and agreements as may be mutually agreed upon in respect thereto, by and between such owner or owners and the Commissioners Court of such county, the action of the latter being expressed by appropriate resolution or order consistent with the subject and purpose of this Act, but under no event shall the said bridge or bridges be acquired by condemnation under the powers of eminent domain.

**Maintenance and Operation; Eminent Domain;  
Franchises**

Sec. 2. Any such county thus acquiring any such toll bridge or bridges, through its Commissioners Court, shall have power to maintain and operate same, and to own, hold and control same, and to make or cause to be made any repairs, or improvements thereto, and to such end shall have all rights and privileges of acquiring property by condemnation under the power of eminent domain accruing to counties of this State for public purposes under general law. Any such county thus acquiring any such properties shall have the power to renew or extend any franchise therefor, and to obtain new or additional franchises therefor, and to do any and all things required, or that may be proper or necessary to the maintenance and operation thereof, and conduct of the business thereof, and of rendering the services thereof to the public and to the patrons of said bridge or bridges; and to such end and for such purposes shall have power to make and enter into and to carry out, observe, and perform any and

all contracts, agreements, and undertakings, of any and every kind, required by the United States of America or the Republic of Mexico or any of their departments, officers, or governmental agencies, or the public authorities thereof.

**Tolls, Fees and Charges; Power of County to Collect;  
Purpose of Tolls**

Sec. 3. Any such county thus acquiring any such toll bridge or bridges shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and nondiscriminatory, as determined by the Commissioners Court of such county, with no free service until the bonds herein provided to be issued to purchase or otherwise to acquire such properties, together with the interest on such bonds, and all duties and obligations incident thereto or arising therefrom are first fully paid, met and discharged; and, subject to the provisions and requirements of any such permits and franchises, and such tolls, fees and charges shall be sufficient at all times to produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf; out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), and (d) above, the Commissioners Court of any such county may in its discretion establish a reasonable depreciation and emergency fund, or retire (by purchase and cancellation or redemption) bonds issued under this Act, or apply the

same to accomplish any of the purposes of this Act.

It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such fees and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c) and (d) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds, or of any person acting in their behalf until the bonds, together with interest thereon and with interest on unpaid installments of interest and all costs and expenses in connection with any acts or proceedings by or on behalf of the bondholders and all other obligations of any such county in connection with such bonds are fully met and discharged.

#### Definition

Sec. 4. The term "toll bridge, with its rights and franchises and appurtenant properties" as used herein is hereby defined to mean and include the physical properties of any such bridge together with and including all permits, grants, franchises, rights and privileges, of every kind granted or extended by the United States of America, or the Congress thereof, or by the Republic of Mexico, or the Congress thereof or any department, officer, agency or governmental authority of either of said Nations; or by any State or municipality or political subdivision of either or both of said two (2) Nations; for or in relation to or in respect of the maintenance or operation of any such toll bridge, or the collection of tolls, fees and charges for the use thereof; and including all lands, right of ways, easements, leaseholds, contractual or other interests of any kind in the land in either or both of said two (2) Nations, held or used or in any manner incident to or for the maintenance, or operation of any such bridge or the approaches thereto, or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, parks, grounds, or conveniences and facilities of any kind, relating or in any manner incident thereto; including all buildings, structures, appurtenances, appliances, equipment, conveniences and facilities of every kind, held or used or in any manner incident to or for the maintenance and operation of such bridge; and including all rights and properties of every kind incident to or used for the maintenance or operation of any such toll bridge;

provided, however, that any such county, in exercising the powers herein granted may acquire by purchase as herein provided, all or any part of any such toll bridge or bridges that is, either the entire bridge or only that part thereof which is situated within the State of Texas; and either all or any part of or any of the respective grants, permits, franchises, rights, contracts, privileges, easements, leases, lands, right of ways, buildings, structures, appurtenances, appliances, equipment, facilities and other interests and items above-enumerated, as included within the meaning of the term "toll bridge with its rights and franchises and appurtenant properties" and as used in this Act, as the Commissioners Court of any such county may, in its discretion determine and deem best.

#### Parks, Recreation Grounds, Camps, Etc.; Power to Acquire Land and Sites

Sec. 5. Any such county acquiring any such toll bridge or bridges shall have the power, in connection with the maintenance and operation thereof, to acquire land and a site or sites for the purpose, adjacent to such bridge or bridges, and to construct, maintain and operate parks, recreation grounds and facilities, camps, quarters, accommodations and facilities for the use and convenience of the public; and to fix and enforce and collect fees, rentals and charges for the use thereof, which shall be just and reasonable and non-discriminatory, as determined by and fixed from time to time by the Commissioners Court of such county; and to make and enforce reasonable rules and regulations therefor, and to manage, control, govern, police and regulate the same but under no event shall the land, site or sites mentioned in this Section be acquired by condemnation under the powers of eminent domain.

#### Borrowing Money or Accepting Grants From Federal Government or Agencies Thereof

Sec. 6. To accomplish the purposes of this Act, any such county shall have the power to borrow money from any person or corporation, and, without limiting the generality of the foregoing to borrow money and accept grants from the United States of America, or from any corporation or agency created by the United States of America, or designated or empowered to act as agency thereof, and in connection with any such loan or grant, to enter into such agreements as the United States of America or such agency or corporation thereof may require in respect or in relation thereto.

#### Bonds, Power to Issue

Sec. 7. Any such county, through its Commissioners Court, shall have the power to accomplish the purposes of this Act, by the issuance, sale and delivery of its negotiable bonds; which bonds or the proceeds of the sale thereof may be used to acquire a toll bridge or bridges by construction, purchase or otherwise. In the event such bonds or the proceeds thereof are used to purchase any then existing toll bridge

with its rights and franchises and appurtenant properties from the owner or owners thereof, or such part or portion thereof as may be purchased by any such county as herein provided for, either by purchase of the properties, as such, or by using such bonds or the proceeds of the sale thereof for the purchase from any owner or owners thereof of the stock of any corporation owning such toll bridge or bridges and for the liquidation and winding up of the business and affairs of such corporation and paying the debts and obligations or liabilities thereof, and all in such manner and to such effect as to vest title to such toll bridge or bridges with their rights and franchises and appurtenant properties for such part or portion thereof as may be purchased, in said county, as provided for herein; and which bonds may be exchanged for property or sold to accomplish any of the purposes of this Act as herein provided.

**Mortgage or Pledge of Revenues to Secure Bonds;  
Sinking Fund**

Sec. 8. Any such county shall have the power, in respect to any such bonds issued in pursuant<sup>1</sup> of the provisions of this Act to accomplish all or any of the purposes of this Act, to mortgage or pledge all or any part of or any interest in the said toll bridge or bridges, with their rights and franchises and appurtenant properties, or any other properties acquired or to be acquired with such bonds or the proceeds of the sale thereof, and all or any part of the gross or net revenues thereafter received by such county for or in respect of any such properties so acquired or to be acquired by such county with such bonds or the proceeds of the sale thereof; to secure the payment of the principal of and interest on such bonds, and of such sinking fund and reserve fund agreed to be made in respect of such bonds and to make and enter into such covenants and agreements with the purchasers of such bonds or any person in their behalf in respect thereto and for securing the payment thereof and for providing rights and remedies to the owners and holders of any such bonds or to any person in their behalf, as the Commissioners Court of any such county may in its discretion approve, determine and provide by appropriate resolution or order adopted for such purposes; all in accordance with the provisions of this Act.

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

**Bonds to be Charge Solely on Revenues of Bridge**

Sec. 9. No bonds authorized to be issued by this Act shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the toll bridge or bridges and appurtenances constructed and acquired through the issuance of such bonds and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be

raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval and if such bonds have been issued in accordance with the Constitution and laws of this State, they shall be approved by the Attorney General and shall be registered by the Comptroller of Public Accounts in the same manner as provided for the approval of tax bonds issued by counties of this State. After such approval and registration the bonds shall be incontestable.

**Additional Bonds; Trust Indenture**

Sec. 10. When any county has bonds outstanding payable from the revenues of any toll bridge or bridges, additional bonds may be issued to the extent and under the conditions prescribed by the provisions of the outstanding bonds and the proceedings relating thereto including the provisions of any trust indenture securing such outstanding bonds, and any such additional bonds may be secured by a pledge of and lien on the net revenues of the bridge or bridges on a parity with such outstanding bonds to the extent, in the manner, and under the conditions set out in the proceedings and/or the trust indenture securing and authorizing such previously issued and outstanding bonds. After any such county shall have acquired a toll bridge or bridges under the provisions of this Act it may in the manner herein prescribed with relation to the issuance of original bonds, issue and deliver subsequent bonds for the purpose of repairing or improving or reconstructing or replacing a toll bridge or bridges, or for any one or more of such purposes, subject only to the restrictions contained in the resolution or orders of the Commissioners Court authorizing the original bonds and in the deed of indenture, if any, securing such original issue of bonds.

**Bonds; Payable Solely From Revenues; Tolls Fixed to be Sufficient to Pay; Depository of Proceeds**

Sec. 11. The bonds issued hereunder may be authorized by resolution or order at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the toll bridge or bridges referred to in the bond proceedings and it shall be the mandatory duty of the Commissioners Court to impose such tolls and charges for the use of the bridge or bridges thus encumbered as will be fully sufficient to satisfy all the purposes set forth in Section 3 of this Act. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instrument Law of Texas. If so provided by the Commissioners Court bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may either pledge or assign the tolls, fees and revenues or mort-

gage the bridge or bridges or any part thereof, or both. Either the resolution or order providing for the issuance of the bonds or the trust indenture securing same may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county with relation to the acquisition of properties and the construction, maintenance, operation, repair and insurance of the bridge or bridges and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the bridge or bridges and to furnish such indemnity bonds or to pledge such securities as may be required by the county.

#### Depository of Proceeds

Sec. 12. If such bonds are sold for cash, the proceeds of the sale thereof shall be deposited in such depository and shall be paid out pursuant to such terms and conditions, as may be agreed upon between the Commissioners Court and the purchasers of such bonds.

#### Rights of Bondholders; Receivers

Sec. 13. Any holder or holders of bonds issued hereunder, including the Trustee or Trustees for such holders, shall have the right in addition to all other rights, by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the county and its officers and employees including, but not limited to, the right to require the county and its Commissioners Court to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the employment of a receiver for the bridge or bridges. If such receiver be appointed, he may enter and take possession of such bridge or bridges and maintain them and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the provisions of the county's obligations under the bond resolution or order or trust indenture and as the court may direct.

#### Amounts and Denominations of Bonds; Interest Rate; Coupon or Registered; Place of Payment

Sec. 14. Any such bonds issued by any such county in pursuance of and to accomplish the purposes of this Act, shall be in such aggregate principal amount or amounts, of such denominations, shall bear such date or dates, and be of such maturities, bearing interest at such rate or rates, not exceeding six per cent (6%) per annum, payable annually or semiannually on such respective dates, in such form, containing such terms, provisions and conditions, either coupon or registered, with such registra-

tion privileges, such provisions for the call or redemption thereof before maturity, payable at such place or places within or without the State of Texas, as the Commissioners Court of any such county may in its discretion approve and determine and provide by resolution or order adopted for such purposes.

#### Sale or Exchange of Bonds; Cash or Terms

Sec. 15. Any bonds issued by such county in pursuance of and to accomplish the purposes of this Act may either be:

(a) Sold for cash, at private or public sale, at such price or prices as the Commissioners Court of such county may determine, provided that the interest cost of the money received therefor, computed to maturity in accordance with standard bond tables in general use by banks and insurance companies, shall not exceed six per cent (6%); or

(b) May be issued on such terms as the Commissioners Court of any such county shall determine in exchange for property of any kind, real, personal or mixed, or any interest therein, which the Commissioners Court of such county shall determine to be proper and necessary to accomplish any of the purposes of this Act; or

(c) May be issued in exchange for like principal amount of any other bonds of such issue matured or unmatured.

#### Exemption From Taxation; Property and Bonds

Sec. 16. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the properties acquired hereunder or on any part thereof and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State. It is provided, however, that any such county which may acquire any such toll bridge or bridges by purchase from private owner or owners thereof may make payments in lieu of ad valorem taxes previously paid by such private owner or owners to any common or independent school district in which such properties are situated. Any payments so made shall be in such amounts as may be determined upon by the Commissioners Court and shall be considered as an operation expense for all purposes of this Act.

#### Refunding Bonds

Sec. 17. Subject to any restrictions which may appear in the bond resolutions or orders or in the trust indentures pertaining to the issuance of bonds hereunder, the Commissioners Court may by resolution or order provide for the issuance of bonds for the purpose of re-

funding any bonds issued under this Act and at the time outstanding.

**Bonds; Legal Investments**

Sec. 18. All bonds issued under the law are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts or other political corporations or subdivisions of the State of Texas, including the State Permanent School Fund; and such bonds shall be lawful and sufficient security for such deposits to the extent of their par value, when accompanied by all unmatured coupons appurtenant thereto.

**Referendum Not Necessary**

Sec. 19. Such counties may purchase such properties and issue such bonds as are herein provided and may use such bonds or the proceeds of the sale thereof for the purchase of any such properties, or to accomplish any other purposes of this Act by action of its Commissioners Court as expressed by resolution or order authorizing and effecting same, and without the necessity of any referendum, and without the necessity of calling or holding any election to authorize any such action, and without the necessity of giving or publishing any notice of intention to acquire any such properties or to issue any such bonds, and without the necessity of advertising or calling for any competitive bids in respect thereto.

**Limitations on Authority of Counties**

Sec. 20. Nothing in this Act shall authorize any such county acting in pursuance hereof or to accomplish any of the purposes hereof, to levy or collect any taxes or assessments therefor or in any respect thereto or to pledge the credit of the State in any manner; or to issue or sell or deliver any bonds or to create any obligations of any kind or to incur any liabilities of any kind or to make or enter into any contracts or agreements of any kind, to be paid or performed or met or discharged out of or from any taxes or assessments. This Act shall constitute full authority for the authorization and issuance of bonds hereunder and no other act or law with regard to the authorization or issuance of obligations, or the deposit of the proceeds thereof in any way impeding or restricting the carrying out of the acts and things herein authorized to be done shall be construed as applying thereto or to any acts or proceedings taken hereunder and acts or things done pursuant hereto and for the accomplishment of the purposes of this act.

**Act Cumulative of Other Laws**

Sec. 21. This Act is declared cumulative of all other acts and laws; and the powers, rights, privileges and functions hereby conferred on any such county, shall not prevent the exercise by any such county of any and all other powers, rights, privileges, or functions

conferred upon such county by any other act or law now existing or hereafter enacted.

**Liberal Construction of Act**

Sec. 22. This Act and all of the terms and provisions thereof shall be liberally construed to effectuate the purposes set forth herein.

[Acts 1955, 54th Leg., p. 1072, ch. 403; Acts 1973, 63rd Leg., p. 360, ch. 158, §§ 1, 2, eff. May 23, 1973.]

**Art. 6796. Boundary Bridge**

Whenever any stream constitutes either in whole or in part the boundary line between two or more counties, or when two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, it shall be lawful for the counties so divided or interested to jointly erect bridges over such stream or over any other stream, upon such equitable terms as the commissioners court of each county interested may agree upon.

[Acts 1925, S.B. 84.]

**Art. 6797. Tolls Assessed to Pay Bonds**

Whenever any county bonds are issued to build bridges, the commissioners court may assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules as said court may prescribe.

[Acts 1925, S.B. 84.]

**Art. 6797a. Interstate Bridges**

**Allotment of Aid Authorized**

Sec. 1. The State Highway Department of the State of Texas is hereby authorized and empowered to make an allotment of aid from any moneys available and to expend funds of said department to acquire, construct and maintain any bridge across or spanning any stream or portion of any stream constituting a boundary between the State of Texas and any other State in an amount not to exceed one half of the amount necessary to acquire, construct or maintain any such bridge, subject to the provisions hereof.

**Application**

Sec. 2. The provisions of this Act shall not apply in any instance wherein any such State adjoining the State of Texas has not enacted a statute making provisions for the acquirement, construction and maintenance of such bridge as between such State and the State of Texas and for the use of such bridge by the public without charge, nor where such bridge does not connect designated highways of the respective State and the State of Texas.

**Agreements With National Government and Other States**

Sec. 3. The State Highway Department of this State is authorized and empowered by the authority of the Governor to enter into negotiations with, and consummate contracts and agreements with such departments of adjoining

States, and with the departments of our National Government, to carry out the purpose of this Act, and in all instances to look to the purpose of furnishing to the traveling public substantial bridges across our State boundaries for its use, without charge.

**Purpose and Intent of Act**

Sec. 4. It is the purpose and intent of this Act to furnish to the traveling public, bridges across our State Boundary for its use without charge, and to elicit the co-operation of each State adjoining the State of Texas, in enacting a similar statute to this Act and to assent to the provisions of an Act of the Sixty-Fourth Congress of the United States, approved July 11, 1916, and being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes";<sup>1</sup> and to ask an Act of the Congress of the United States whereby bridges spanning streams which are boundaries between the States and connecting designated highways of such States, may be condemned for public use and travel without charge and to provide the manner of such condemnation and to provide for and make appropriations for acquiring, constructing and the maintenance of such bridges.

<sup>1</sup> Act of July 11, 1916, c. 241, 39 Stat. 355.

**Acquisition of Bridges Across Red River and Franchises**

Sec. 4-a. In the event the Highway Commissions of the States adjoining the State of Texas are unwilling, or are unable by the provisions of their laws, to join with Texas in acquiring bridges and franchises across Red River: Then in such event the Highway Commission of Texas is authorized to acquire such bridges and franchises as may cross the northern boundary of Texas over Red River, without the joinder of such neighboring States or their Highway Commissions. Provided, however, that in such purchase the replacement value of the physical properties only shall constitute the purchase price, and in no event shall more than Fifty Thousand Dollars (\$50,000) be expended; and provided, further, that the Highway Commission of Texas is hereby authorized only to purchase such bridges as may have owned a right of operation existing for forty (40) years or more prior to the date of this Act.

[Acts 1927, 40th Leg., p. 252, ch. 175; Acts 1935, 44th Leg., p. 641, ch. 256, § 1.]

**Art. 6797b. Acceptance of Federal Aid for Construction of Toll Bridges**

Sec. 1. The provisions and benefits of the Act of Congress authorizing the extension of Federal Aid for construction of toll bridges on highways forming a part of the Federal system, under certain conditions and limitations, 44 United States Statutes 1398, approved March 3, 1927<sup>1</sup>, be and the same is hereby accepted; and the State Highway Department of this State is authorized and empowered to cooperate with the Federal Bureau of Roads in the construction of such toll bridges under the

provisions of said Act of Congress, including inter-state bridges over streams constituting the boundary line between the State of Texas and an adjoining State; to appropriate and use State Highway Funds for such purpose; to fix, levy and collect such tolls as provided by the said Act of Congress, to the end that such bridges may become free, as contemplated or provided by the said Act of Congress; and to do all such acts and things as may be necessary or proper to give effect to the intent and purpose of this Act.

Sec. 2. This Act shall include inter-state bridges over streams forming the boundary line of the State of Texas and another state and when such bridge or bridges are constructed jointly by the State of Texas and an adjoining State the Highway Commission shall have authority to cooperate and join with the appropriate authorities of such adjoining state in fixing, levying and collecting such tolls to carry out the provisions of this Act and the Act of Congress.

[Acts 1929, 41st Leg., p. 382, ch. 173.]

<sup>1</sup> 23 U.S.C.A. § 9a.

**Art. 6797c. Removal of Bridges Obstructing Intracoastal Waterways**

The State Highway Commission of Texas, at the request of the United States Government, or any of its authorized agents, is hereby authorized, out of any funds available for such purpose, to remove Highway Bridges obstructing the construction of the Intracoastal Waterway of Louisiana and Texas now being dredged by the United States Government, and to replace and maintain such of said Bridges as the State Highway Commission of Texas deems necessary, to be paid for out of any funds available for such purpose.

[Acts 1935, 44th Leg., p. 392, ch. 150, § 1.]

**2. FERRIES**

**Art. 6798. Right to Maintain**

Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across the same. If he owns the lands on both sides or banks he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore. If such consent cannot be obtained, he may apply to the commissioners court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases.

[Acts 1925, S.B. 84.]

**Art. 6799. License**

No person shall keep any such ferry for hire without first procuring a license from the com-

commissioners court of the county in which such ferry is situated. If the applicant for such license shows that he is the lawful owner of such land as the ferry is sought to be established on, and satisfies the court that the public convenience will be promoted thereby, such court shall grant such license for one year from the date thereof, when the applicant makes bond and produces his receipt from the county treasurer for the payment of the annual license tax, which said court is authorized to assess and collect from each such ferryman, not to exceed one hundred dollars per annum. Such license shall be renewed annually.

[Acts 1925, S.B. 84.]

#### Art. 6799a. Keeping Ferry Without License

Whoever shall keep any ferry over any water course, navigable stream, lake or bay in this State, and shall charge or receive any money, property, or other valuable thing for crossing passengers or property at such ferry, without first obtaining license as required by law, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

#### Art. 6799b. Failure to Keep Good Boats, etc.

If the owner of any licensed ferry in this State shall fail to keep at all times good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons or other property, or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

#### Art. 6800. Bond

The owner of each ferry shall annually enter into bond payable to and to be approved by the county judge, in such sum as the commissioners court shall direct, not less than one thousand dollars, conditioned that such owner will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with the laws relating to or governing ferries. Any person injured by breach of such bond may sue thereon in his own name. Such bond may be sued on until the whole penalty is recovered.

[Acts 1925, S.B. 84.]

#### Art. 6801. Rates of Ferriage

When a commissioners court shall establish a ferry, they shall state in their record the rate of toll or ferriage which may be demanded for

ferrying such property as is usually transported by ferries; and may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries in their county. The county clerk shall record all rates of ferriage and changes therein and deliver copies thereof, under his hand and official seal, to the owners of ferries affected. No change of rate shall take effect until the expiration of thirty days from the day on which said change may be made.

[Acts 1925, S.B. 84.]

#### Art. 6802. Swimming Cattle

The commissioners court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock.

[Acts 1925, S.B. 84.]

#### Art. 6803. To Post Rates

Every owner of a ferry license shall keep a list of the rates of toll or ferriage established for his ferry posted up at either the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor. Every week that he shall so fail or neglect shall be deemed a separate offense for which he shall be liable as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 6804. Excessive Rates

If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit.

[Acts 1925, S.B. 84.]

#### Art. 6805. Duties of Ferryman

Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons, and other property.

[Acts 1925, S.B. 84.]

#### Art. 6806. Delays

If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect without a reasonable cause, to cross any person or property usually transported by such

ferry, he shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace of the county in which the ferry is situated, with costs of suit.

[Acts 1925, S.B. 84.]

#### Art. 6807. Refusal to Operate

Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners court, said court may issue a license to any one who will do so. In such case the party receiving such license shall be bound to take the ferry boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it.

[Acts 1925, S.B. 84.]

#### Art. 6808. Recovery From Sureties

In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment, execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown, judgment shall be entered and execution issue therefor.

[Acts 1925, S.B. 84.]

#### Art. 6809. Temporary License

One wishing to establish a public ferry between the regular terms of the commissioners court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay.

[Acts 1925, S.B. 84.]

#### Art. 6810. County Boundary Stream

If the banks of any water course, navigable stream, lake or bay lie in different counties, the application for a license to operate a ferry between such banks shall be made to the commissioners court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this subdivision for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a fer-

ry by any other commissioners court than the one granting the license therefor.

[Acts 1925, S.B. 84.]

#### Art. 6811. State Boundary Stream

When a water course, navigable stream, lake or bay forms a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or charge may be assessed and collected by the commissioners court for the like privilege of landing on the bank or shore of this State.

[Acts 1925, S.B. 84.]

#### Art. 6812. Unlicensed Ferry

If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this subdivision in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of suit; and shall forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer.

[Acts 1925, S.B. 84.]

#### Art. 6812a. Ferries Connecting State Highways, Acquisition by State Highway Department

Sec. 1. The State Highway Department is hereby authorized to acquire by purchase, and/or to construct, maintain, operate and control ferries, out of the Highway Fund of the State of Texas, over and across any bay, arm, channel or salt water lake emptying into the Gulf of Mexico, or any inlet of the Gulf of Mexico, any river or other navigable waters of this State where such ferries connect designated State highways, and which may be made self-liquidating or partially self-liquidating by the charging of tolls for the use thereof.

Sec. 2. That the provisions of this Act shall not apply in any instance where any State adjoining the State of Texas has not enacted a Statute making provisions for the acquirement, construction and maintenance of ferries as between such state and the State of Texas, and for the use of such ferries by the public with or without charge as both States may agree, but such ferries must connect designated highways of the adjoining State and the State of Texas.

[Acts 1933, 43rd Leg., 1st C.S., p. 228, ch. 87.]

## CHAPTER SIX. PARTICULAR COUNTIES, LAW RELATING TO

### Article

- 6812b. Counties of 198,000 to 400,000.  
 6812b-1. Counties of 49,400 to 52,000; County Engineer; Duties.  
 6812c. Building or Set-Back Lines; Adjacent Counties of 350,000.  
 6812d. Private Roads; Construction and Maintenance in Certain Counties.  
 6812e. Private Roads; Construction and Maintenance in Counties of 8,040 to 8,055.

### Art. 6812b. Counties of 198,000 to 400,000 Rules, Regulations, Plans and System

Sec. 1. In all counties in this State having a population of more than one hundred and ninety-eight thousand (198,000) inhabitants, and less than four hundred thousand (400,000) inhabitants according to the last preceding Federal Census, and wherein is situated an incorporated city having a population in excess of two hundred and fifty thousand (250,000) inhabitants according to the last preceding Federal Census, the Commissioners Court of such counties shall have full power and authority, and it shall be its duty to adopt, at a meeting of said court of which the county judge and at least three (3) of the county commissioners of said counties shall be present and cause to be recorded in the minutes of said court, and put into effect such rules, regulations, plans and system for the maintenance, laying out, opening, widening, draining, grading, constructing, building and repairing of the public roads of said counties, other than the State highways located therein, as the available funds of the counties will permit so as to facilitate travel between the communities thereof, subject to and in harmony with the duties of the county engineer as herein specified. Where such rules, regulations, plans and system have already been adopted by the Commissioners Court of such counties and are of record, it shall not be necessary to repeat the same in the absence of public necessity therefor, but same may be amended and supplemented from time to time as the public needs may require.

#### County Engineer

Sec. 2. The Commissioners Court of each such county shall appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task; such engineer may be selected at any regular meeting of the Commissioners Court, or at any special meeting called for that purpose, and such engineer shall hold his office for a period of two (2) years, his term of office expiring concurrently with the terms of other county officers, but may be removed at the pleasure of the Commissioners Court. Such engineer shall receive a salary to be fixed by the Commissioners Court not to exceed Ten Thousand Dollars (\$10,000) per year, to be paid out of the second-class road and bridge fund; such engineer before entering upon the discharge of his duties, shall take the oath of office prescribed by

law, and shall execute a bond in the sum of Fifteen Thousand Dollars (\$15,000), with a good and sufficient surety or sureties thereon, payable to the county judge of said county and his successors in office in trust, for the use and benefit of the road and bridge fund of said county, to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said Commissioners Court and shall faithfully and honestly and in due time, account for all the money, property and materials placed in his custody.

#### Classification and Record of Roads

Sec. 3. The county engineer shall, under the direction of the Commissioners Court, and as soon as practicable, classify all public roads in such county, and such classification when completed, and when approved by the court, shall become a part of the permanent records, of roads and bridges, of said counties. He shall prepare a suitable map on which shall be delineated in appropriate colors the various roads which shall be designated as first, second and third class roads; said map shall show to which class each road belongs and the nature of its construction. He shall make a complete indexed record of each county road in the county, together with all bridges; said records shall show when each county road was dedicated to the use of the public, a complete description as to location, measured length, width of right of way, character of construction and terminals of same.

Each road shall be indexed in said record by the same number and name as it is delineated on said map. As new roads are opened and improved, and the existing roads are widened or improved so as to change their class, such facts shall be added to the record of such roads in the "Records of Roads." Such information shall be made available to the public; provided, however, that any omission in respect to the above requirement shall not invalidate any contract for the construction or repair of any road or highway in said county, and where such classification, records and indexes have heretofore been prepared there shall be no necessity to repeat the same in the absence of public necessity therefor, but same may be amended, added to or taken from as the facts and public need may demand.

#### Inventory and Appraisal of Equipment; Disposal and Purchase

Sec. 4. The county engineer shall at the end of every three (3) months, acting in conjunction with the county purchasing agent of said county, make a complete inventory and appraisal of all tools, machinery, equipment, materials, trucks, cars, and other property owned by the second-class road and bridge fund, and transmit the same in written form to the Commissioners Court and the county auditor, which written report shall be kept as a "Permanent Inventory Record" by the county

auditor, and when any of said tools, machinery, trucks, cars and other property and equipment become unusable, the Commissioners Court shall enter an order upon the minutes of the court, stating such facts and the reason for disposing of such equipment and shall have authority to dispose of same as it deems best. When in its opinion it is necessary to purchase other machinery, supplies, tools and other equipment and materials, the Commissioners Court shall enter an order on the minutes showing the necessity therefor. All equipment purchased or acquired as herein specified, shall be shown on the "Permanent Inventory Record."

#### Employees

Sec. 5. The Commissioners Court shall employ all help necessary for the discharge of their public service. Such employees shall receive such compensation as may be fixed by the court, but in all such cases an order shall be passed and entered on the minutes of the court, showing in each case the public necessity for such employment and the amount of compensation to be paid each employee and the fund out of which it is to be paid.

#### Daily Time Sheet

Sec. 6. The engineer shall keep, or cause to be kept, in duplicate a daily time sheet which shall show the amount of time and the character of work performed and the place where the same is performed by each person working for the county on road maintenance or construction, and such other records in connection therewith as the Commissioners Court and the county auditor may require, one (1) copy of which shall be furnished the county auditor, and one (1) copy shall be retained in the office of the engineer.

#### Master Plan

Sec. 7. The county engineer shall, when funds are available and when authorized by the Commissioners Court to do so, make a careful and thorough survey of all roads at that time opened and constructed with a view of determining what new roads and connections of roads should be opened and constructed, as well as what roads should be widened and improved. In making such survey, he shall take into consideration the convenience of the traveling public, and especially the convenience of the citizenship of the county, so that each community or part of the county shall have easy and practical connection with the other and with the State highway system of roads in said county, thereby furnishing to the citizenship of the county a convenient means of ingress and egress into and out of every city and town, as well as every other community in the county. The roads indicated in such surveys to be opened and constructed, as well as existing roads that are designated to be widened and improved, shall be located and designated with a view of giving the entire county an efficient road system. The Commissioners Court shall, in selecting roads or new roads, as well as the

improvement of existing roads, look to the density of the population, the amount of traffic that will normally flow over such roads. Such survey, when completed by the engineer, and when adopted by the Commissioners Court at a regular meeting thereof, shall be known as the "Master Plan." When such "Master Plan" has been completed, and adopted by the court as herein stipulated, the same shall be made in permanent record form and kept by the county engineer, and after such adoption, all new construction, widening and permanent improvement shall be done in accordance with such "Master Plan" with a view of ultimately completing the same, both as to location and character of construction. The construction and completion of said "Master Plan" shall proceed as the available funds of the county will permit, and each unit of such construction shall be made in accordance with such "Master Plan." The order in which the roads or projects in the construction of said "Master Plan" are constructed shall be determined by the county engineer, with the approval of the Commissioners Court and in determining the priority of roads or projects, the engineer and court shall take into consideration the necessity and convenience of the public and shall give priority to those roads or projects that will result in the greatest service to the greatest number of the citizenship of the county, looking at all times to the entire county as a unit and wholly disregarding precinct lines.

#### Adoption and Alteration of Master Plan

Sec. 8. The Commissioners Court shall, when said "Master Plan" is submitted to them for adoption, or if after adoption an amendment or change thereto shall be deemed advisable, set a date at a regular meeting of the Commissioners Court called for that purpose, and give public notice thereof at least two (2) weeks in advance of such meeting and the purpose thereof, inviting the citizenship of the county to be present and protest any part of said "Master Plan" and also to make such suggestions as they deem pertinent in connection with same, or any change therein, but the decision of the Commissioners Court shall become and be final and conclusive as to said "Master Plan", and no succeeding Commissioners Court shall have the power or authority to alter and/or change or amend any of the provisions thereof except by unanimous vote of the Commissioners Court. Provided, that where such "Master Plan" has once been adopted, there shall be no necessity to repeat the same in absence of public necessity therefor, but same may be amended and altered when public necessity therefor is shown, and after notice is given as hereinabove provided.

#### Subdivisions and Additions

Sec. 9. Many subdivisions and additions, for residential, industrial and commercial purposes, lying and being outside the corporate limits of any city, town or village, have in recent years been platted and such plats and ded-

ications approved by Commissioners Courts and filed for record in such counties. And many more such subdivisions will hereafter be prepared and submitted to Commissioners Courts of said counties. The platting and dedicating of such additions and the consequent sale of lots in such subdivisions have caused the rapid development of such subdivisions and consequent increase of traffic in, on and along the dedicated streets in said additions and subdivisions, and it shall be the duty of the county engineer and the Commissioners Court to cause the "Master Plan" to be conformed to such needs and demands of such subdivision by constructing adequate highways leading from such subdivisions to the county seat, provided that from and after the passage of this Act the Commissioners Court, before approving the plat or plan of any subdivision lying outside the corporate limits of any city, town or village, as required by Article 6626 of the Revised Civil Statutes of the State of Texas, 1925, as amended, shall require such subdivider to enter into a written contract and agreement with the county that such subdivider or dedicator will grade, and gravel, all streets and provide all necessary drainage structures within such tract of land so subdivided. Such street improvements and drainage structures shall be in accordance with standard plans and specifications prepared by the county engineer. Such contract shall be for the benefit of any person or persons, firm or corporation who may thereafter acquire by purchase or otherwise any lot or lots in said addition or subdivision, and the faithful performance of said contract as to the initial improvements of said streets shall be deemed a part of the consideration paid for said lot and be read into the contract of sale of same, and such contract shall be enforceable at the instance, and suit if necessary, of the owner or owners of any of said lot or lots in a given subdivision suing singly or as a group or class. After such initial street improvements have been completed in accordance with such plans, said streets then become and remain a part of the county road system and shall be maintained by the county unless and until included within the corporate limits of some city, town or village capable of maintaining its own streets.

#### Payment of Employees

Sec. 10. It shall be the duty of the county auditor to compute the pay for all employees under the court's supervision from time sheets furnished him by the engineer, and no check or warrant shall be issued in favor of any such employee without the approval of such auditor. It shall be the duty of said auditor to see that no employee is paid for time not actually served by such employees and to this end he shall have authority, and it is hereby made his duty, at such time or times as he deems advisable, to check any or all of such employees while they are actually engaged in work. Nothing in this Act, however, shall be construed as repealing or being in conflict with

the provisions of Article 2372g-1, Vernon's Revised Statutes of 1925.

#### Special Counsel

Sec. 11. The Commissioners Court shall have the authority to employ special counsel, learned in the law, to advise the court or the Commissioners thereof in all matters wherein the services of counsel may be required, and also to conduct the litigation of the county in which the interests of the county may be involved, which employment may be made for such time and on such terms as the Commissioners Court may deem proper and expedient.

#### Surveys, Plans and Specifications; Gradings; Drainage; Culverts and Bridges

Sec. 12. Before actual construction shall have begun on any road or highway so to be improved, the county engineer, under the direction of the Commissioners Court, shall make careful and accurate surveys of the roads and highways to be improved, and shall file with the records of the courts plans and specifications and estimates as to the cost thereof. Provided, that the provisions of this Section shall not apply to work done by county convicts. As far as practicable, all such roads shall be thoroughly graded and drained, and all roadbeds, bridges, culverts and drain pipes shall be of durable material, the bridges to be of steel or cement and the drain pipes of vitrified clay or of material equally durable and lasting. All culverts and bridges on first and second-class roads shall not be less than twenty-four (24) feet in length and of sufficient strength to support all forms of motor traffic, and the weight of all farm and road engines.

#### Acquisition of Land; Condemnation

Sec. 13. Whenever in the judgment of the Commissioners Court it shall be or become necessary to lay out and construct any road or highway in or through the county or any part thereof, whether said road extends through any city, town, village, hamlet, community or otherwise or whenever it shall be or become necessary in the judgment of the Commissioners Court to occupy any land, in town or county, for the purpose of constructing, building, opening, widening, straightening, draining, grading, improving, repairing or maintaining any public road or highway of said counties or any part thereof, said court, through the agents and employees of the county may enter upon, occupy and take such land, paying therefor, if the owner thereof and said court can agree on the price thereof, as to the value of the land so taken and the amount of damage, if any there be to the remainder, but if such owner and the Commissioners Court cannot agree with respect to such value or damage or both, then said county may proceed to condemn such land for any of the purposes hereinabove mentioned in the same manner as now or may hereafter be prescribed by law for condemnation by railroad corporations and may condemn land for right of way under such proceeding with a right to invoke the Statutes, in so far as the same may

be applicable for the exercise of the right of eminent domain by railroad corporations except that, in no case, shall the county be required to give bond or to deposit more than the amount assessed by the Commissioners in condemnation; provided however, that nothing contained in this Section shall be held to repeal the provisions of the General Law now in force or that may hereafter be passed relating to the opening or construction of public roads by a jury of view, but this Section shall be held to be cumulative thereof, and the Commissioners Court of said county may, at the option of said court, in such cases proceed under the provisions of such General Law or under the provisions of this Act according as same may be best adapted, in the judgment of said Commissioners Court, to expedite the relief sought to be obtained.

#### Drainage of Railroad Rights of Way

Sec. 14. Whenever it shall be made to appear to the satisfaction of said Court that it is necessary for the better drainage of any public road or roads within said county that the ditches along the right of way of any railroad in the county should be emptied and drained, said court may, by an order entered upon its minutes at a regular or special term of the court, require any such railway whose ditches or borrow pits are so constructed or so out of repair as to impede the easy and rapid flow of water accumulating on, along or near its right of way to the nearest gully, ravine, creek, water course or outlet, and it shall be the duty of said railway in reference to which said order is made and entered within sixty (60) days after a certified copy of said order shall have been delivered to any general officer of such railway company or to any of its agents in said county to supply proper and sufficient drainage in the premises and within sixty (60) days thereafter to commence the work so ordered to be done and to continue such work with reasonable dispatch until its completion. In the event such railway company, its officers and agents shall fail to commence work within sixty (60) days from the date of service of a certified copy of such order, or having begun shall fail to finish the same within a reasonable time, the Commissioners Court may have such work performed, keeping an accurate account of the money expended upon said work, and said money so expended being reasonable in amount, may be recovered from the railway company along whose right of way said work was done at the suit of the county for the benefit of its road and bridge fund in any court of competent jurisdiction.

#### Payment of Road Taxes; Overseers

Sec. 15. In such county the payment of road taxes by labor is abolished and all provisions of laws concerning overseers shall be of no further force or effect.

#### County Commissioners; Duties and Compensation

Sec. 16. Each member of the Commissioners Court shall be and he is hereby required to

devote all of his time (unless prevented by illness) to the duties of his office, and shall be in attendance at all sessions of the court. In addition thereto he shall personally inspect the conditions of the roads and bridges of the county, and shall see to it that employees under the control of the Commissioners Court perform their full duties. Each member shall receive an annual salary as provided by the General Statutes of the State of Texas relating to the salaries of county commissioners in counties having a population which conforms to the population of the counties affected by this Act. Said salaries to be paid out of the road and bridge fund of the county.

#### Amount of Road and Bridge Tax

Sec. 17. It shall be unlawful for said Commissioners Court to levy any road and bridge tax in excess of the maximum rate prescribed by law, and any member of said court who shall vote for such excessive levy, knowing it to be excessive, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500).

#### Convict Labor

Sec. 18. Said court may require all county convicts of said county, who may be physically able and not otherwise employed, to work on the public roads of said county under such rules and regulations as the court may prescribe, and each convict so worked shall receive a credit of Three Dollars (\$3) per day, one half of which shall be as nearly as practicable, applied to the fine, and one half to the court costs, provided that this shall not be so construed as to relieve a convict from the payment of all costs for which he would be liable under the General Laws of this State; said court may, as a reward for good behavior and faithful service, grant a reasonable commutation which shall in no case exceed one-tenth ( $\frac{1}{10}$ ) of the whole time. Said court may provide all such houses, tents, clothing, bedding, food, medicine, medical attention, supplies and guards as it may deem necessary or proper for the safe and humane treatment and for the safe-keeping of such county convicts. Said court may also provide and enforce and such guards may, under the direction of said court and in accordance with its rules and regulations, administer such reasonable and humane punishment as may be necessary to require such convicts to perform good work. Said court may provide a reward, not exceeding Ten Dollars (\$10) in any instance, to be paid out of the road and bridge fund for the capture and delivery of an escaped convict, but no such reward shall be paid to any guard or persons in charge of or assisting such convict at the time of his escape.

#### Bond Issues; Resolution; Election

Sec. 19. Whenever the Commissioners Court shall deem it necessary or expedient to build, construct, improve, repair or maintain first or second-class roads of a permanent na-

ture with the proceeds of the sale of bonds issued for road and bridge purposes under the terms of this Act, said court, shall at any regular meeting pass and record in its minutes a resolution setting forth that it is the sense of said court that public roads and bridges of a permanent nature should be built, constructed, improved, repaired or maintained and that the county should issue its bonds to raise money for that purpose in an amount to be named in such resolution, and said resolution shall be submitted to the vote of the property-owning, qualified voters of the county under the law and the Constitution at any regular or special election which the court may order for that purpose, and if at such election a majority of the votes cast shall be for such resolution, then the same shall be deemed to be adopted; otherwise it shall be deemed to be rejected. Such election shall be governed in all respects by the laws governing elections in this State, save that the time for holding such elections, the manner and kind of notice shall be fixed by the Commissioners Court, and the returns shall be made and canvassed in the same manner and the result declared by proclamation of the county judge, which proclamation shall be posted in at least three (3) public places in the county, or at the option of the court published one time in a daily newspaper of general circulation in the county.

#### Qualifications of Voters; Ballots

Sec. 20. No person shall be permitted to vote at any election provided for in the next preceding Section of this Act unless he is a property owner, taxpayer, who has duly rendered his property for taxation, and a qualified voter of the county under the law and Constitution of Texas. Those desiring to vote for the resolution shall have written or printed on their ballot the words "FOR the Resolution to issue bonds to \_\_\_\_\_" and those desiring to vote against the resolution shall have written or printed on their ballots the following: "AGAINST the Resolution to issue bonds to \_\_\_\_\_" (here insert such purpose of the proposed bond issue as set forth in said resolution). Such ballots shall be written or printed on plain white paper with black ink and shall contain no distinguishing mark or device except as above provided, and if printed, shall be in type of uniform size and face.

#### Preparation and Execution of Bonds; Terms of Bonds; Registration and Enrollment; Sale or Negotiation; Tax Levy

Sec. 21. If, at the election hereinabove provided for, a majority of the property-owning qualified voters, under the Constitution and Laws of the State, shall vote in favor of the resolution hereinbefore provided for and the Commissioners Court shall have canvassed the vote and declared the result, and proclamation therefor has been made by the county judge or publication made in lieu thereof, declaring said result, then it shall be the duty of said court to

prepare and execute the bonds of the county in such sums as may be deemed advisable by the court, not exceeding the amount authorized at the election, said bonds to bear interest at not exceeding five per cent (5%) per annum, payable annually or semi-annually as the courts shall direct, which bonds shall be redeemable or payable not more than forty (40) years from date thereof, and at such intermediate periods, serially or otherwise as the court may direct, the time of maturity to be expressed on the face of the bonds and such bonds shall be registered or enrolled as in case of other county bonds, and the same shall not be sold or negotiated at less than their par value; provided, however, that the tax levy for the payment of interest and principal on any issue of bonds under the terms of this Act shall not exceed in any one case the sum of Fifteen Cents (15¢) on the One Hundred Dollars (\$100) property valuation, and the amount of bonds so to be issued shall be limited accordingly; provided further, that nothing in this language or in the terms of this Act shall be held to impair the right of the county to issue bonds under the provisions of Article 3 of Section 52 of the State Constitution and the Statutes enacted pursuant thereof.

#### Levy of Tax; Use of Tax and Bond Proceeds

Sec. 22. At or prior to the issuance of said bonds, it shall be the duty of said Commissioners Court to levy an annual ad valorem tax on all property within the county liable to taxation, sufficient to provide for the interest on such bonds and to create a sinking fund for the payment of the principal thereof at the maturity of same. Such tax and the levy thereof may vary or lessen accordingly as assessed taxable values may increase or diminish from year to year. The fund arising from such tax and the levy thereof shall not be used for any other purpose than that for which it was created, and the proceeds of the sale of such bonds shall be confined strictly for the purpose for which they were issued and for all necessary and incidental expense incurred in the issuance and sale thereof. It shall be unlawful for said court to transfer any money or fund from the road and bridge fund to any other purpose, except as outlined in Section 15 of this Act, than the laying out, opening, widening, draining, constructing, building, repairing and maintaining the public roads of said counties and the incidental and necessary expense growing out of the issuance of said bonds and the sale thereof.

#### Account and Disbursement of Bond Proceeds

Sec. 23. It shall be the duty of the county treasurer to keep a separate account of all moneys received from the sale of bonds of said county issued for road and bridge purposes, and said treasurer shall pay out none of it except on written order or warrant of said court, specifying the contract against which it is drawn or for the purpose for which it is expended.

## Contracts; Alternative Methods; Record of Cost

Sec. 24. Except as otherwise provided in this Act, no contract requiring the expenditure of money derived from the sale of bonds authorized by this Act shall be made until said county engineer shall have made and filed with the Commissioners Court maps, profiles, plans, specifications, and estimates of the work to be done under such contract and not until said court shall have considered the same and ordered it of record. Provided, however, that in the event said court shall have advertised for and rejected bids, it may in its discretion proceed to do the work mentioned in said advertisement. In the expenditure of road funds other than moneys derived from the sale of bonds, the Commissioners Court may authorize the building, construction and repair of roads by contract, day labor or convict labor as said court may deem to be for the best interest of the county. In every instance where the court chooses to do so under the terms of this Act to build, improve, repair or maintain roads by having the work done by the county, then the county must keep a careful and accurate record of the cost of the work, provided the work referred to in this Section shall be done under the direction of the county engineer in harmony with the other provisions of this Act.

## Purchase of Equipment and Material

Sec. 25. Any and all tools, implements, machinery, material and supplies which may be purchased from the second-class road and bridge fund by the court under its direction shall be purchased only after competitive bid therefor shall have been invited by the court, and then only from the lowest responsible bidder, with the right on the part of the court to reject any and all bids and call for other competitive bids thereon; provided, however, bridge lumber, corrugated iron pipe for culverts, road surfacing materials, cement, gasoline, oil, groceries, convict supplies and other materials in regular or constant use may be purchased in carload or other practical large lots under competitive bidding as herein stipulated.

## Advertisements and Bids; Bond of Successful Bidder; Withholding Percentage of Estimates

Sec. 26. Whenever, pursuant to the provisions of this Act, said court shall desire to make a purchase or let a contract for which competitive bids are required under the terms of this Act, said court or the county auditor under its direction, may advertise for bids therefor in such manner and for such length of time as the order of the court may prescribe with the right on the part of the court in every case to reject any and all bids; the advertisement for bids shall be made by either posting same or by publication in such manner and for such length of time as the court may direct; provided, however, that this shall not be held to invalidate or prevent purchases, without competitive bids under the terms of the next

preceding Section hereof. Whenever any such contract is let in which competitive bids are required, the successful bidder or contractor shall enter into a bond in a sum not less than the amount of the contract with a surety company authorized to do business in Texas thereon, payable to the county judge or his successors in office, in trust for the use and benefit of the road and bridge fund of said counties, to be approved by the court and conditioned for the faithful performance of said contract and upon such other conditions as the court may require. In no event shall such contract be or become effective until the bond herein required shall have been filed and approved by the court. Provided, further, that during the progress of such work, the court in allowing estimates on the contract shall withhold fifteen per cent (15%) of each estimate until the work shall have been entirely completed and is accepted by the county engineer and by the Commissioners Court.

## Transfers to Road and Bridge Fund

Sec. 27. The Commissioners Court is authorized and empowered, whenever and in such manner as it may determine, to transfer to and make a part of the road and bridge fund of said county any money now in the county, to pay interest and create a sinking fund for any bonds of said county heretofore issued and which have now been retired and cancelled. Such money so transferred to the road and bridge fund may be expended by the Commissioners Court at their discretion in constructing or repairing any of the first-class or cross roads of the county, such expenditures to be made in compliance with the provisions and requirements of this Act.

## Record of Vote on Expenditures

Sec. 28. The records of the Commissioners Court shall show in detail every vote for expenditure of any of the funds mentioned in this Act.

## Shade Trees; Signboards or Signposts

Sec. 29. The Commissioners Court may, where funds are available for that purpose, plant shade trees along the side of the public roads; the Commissioners Court may protect all shade trees along the side of said thoroughfares and erect, place and keep a substantial signboard or signpost at every point where a public road forks or is intersected by another public road and such signboard or signpost shall contain a legible inscription directing the way and giving the distance of the next important place on such highway. Any person who shall willfully remove, injure, deface or mutilate or injure the growth of any shade tree along the side of a public road or any signboard or signpost thereon or thereabouts shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

Financial Interest of Members of Commissioners Court;  
Violations of Act

Sec. 30. It shall be unlawful for any member of the Commissioners Court or for any county officer to be or become financially interested, directly or indirectly, in any contract with said county for road work or for the purchase or sale of any material or supplies of any character or in any transaction whatsoever in connection with any of the roads of said county, excepting only his own salary, fees or per diem. If any such county commissioner or such county officer shall willfully violate any of the foregoing provisions of this Section, he shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail of said county for not more than one (1) year or by both such fine and imprisonment and in addition thereto shall be forthwith removed from office as provided for by General Law. If any member of said Commissioners Court or any such officer shall willfully violate any of the other provisions of this Act, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the county jail of said county for not more than six (6) months or by both such fine and imprisonment.

Fines and Moneys Collected Applied to Road  
and Bridge Fund

Sec. 31. All fines for any and all violations of any of the provisions of this Act and any and all moneys which may be collected by or on behalf of said county, on, under, or by virtue of any contract which may be executed under the provisions of this Act shall be applied to the road and bridge fund of said county.

Definitions

Sec. 32. The terms "Road" and "Highway" as used in this Act shall be held to include bridges, viaducts, causeways, culverts, roadbeds, ditches, drains and every part of a road or highway as such terms are commonly understood whether herein specified or not.

Judicial Notice of Law

Sec. 33. This Act is and shall be held and construed to be a public act of which the court shall take cognizance without proof thereof, and in any court proceedings wherein the provisions of this Act are drawn in question, the necessity for pleadings or proving same is hereby dispensed with.

Law Cumulative; Conflict or Inconsistency

Sec. 34. The provisions of this Act are and shall be held and construed to be cumulative of all General Laws of this State on the subject treated of and embraced in this Act when not in conflict or inconsistent herewith, but in case of such conflict or inconsistency in whole or in part, this Act shall control said county.

Partial Invalidity

Sec. 35. If any section, subdivision, paragraph, sentence, clause or word of this Act shall be held to be unconstitutional, the remaining portions of same shall, nevertheless, be valid and it is declared that such remaining portions would have been included in this Act though the unconstitutional portion had been omitted.

[Acts 1951, 52nd Leg., p. 471, ch. 299.]

Art. 6812b-1. Counties of 49,400 to 52,000;  
County Engineer; Duties

County Engineer

Sec. 1. The commissioners court of any county having a population of not less than 49,400 nor more than 52,000, according to the last preceding federal census, may appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task. The engineer may be selected at any regular meeting of the commissioners court, or at any special meeting called for that purpose. The engineer selected shall be a Registered Professional Engineer in the State of Texas. The engineer shall hold his office for a period of two years, his term of office expiring concurrently with the terms of other county officers, and he may be removed at the pleasure of the commissioners court. The engineer shall receive a salary to be fixed by the commissioners court not to exceed the amount of the salary paid to the highest county official, to be paid out of the Road and Bridge Fund. The engineer, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond in the sum of \$15,000 with a good and sufficient surety or sureties thereon, payable to the county judge of the county and successors in office in trust, for the use and the benefit of the Road and Bridge Fund, of the county to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said commissioners court and shall faithfully and honestly and in due time account for all of the money, property and materials placed in his custody.

Classification and Record of Roads

Sec. 2. (a) The county engineer shall, under the direction of the commissioners court, and as soon as practicable, classify all public roads in such county, and such classification when completed, and when approved by the court, shall become a part of the permanent records of roads and bridges of said county. He shall prepare a suitable map of which shall be delineated in appropriate colors the various roads which shall be designated as first, second, and third class roads. The map shall show to which place each road belongs and the nature of its construction. He shall make a complete indexed record of each county road in the county and all bridges. The records shall

show when each county road was dedicated to the use of the public, a complete description as to location, measured length, width of right-of-way, character of construction, and terminals of same.

(b) Each road shall be indexed in the record by the same number and name as it is delineated on the map. As new roads are opened and improved, and the existing roads are widened or improved so as to change their class, such facts shall be added to the record of such roads in the "Records of Roads." Such information shall be made available to the public; provided, however that any omission in respect to the above requirement shall not invalidate any contract for the construction or repair of any road or highway in said county, and where such classification, records and indexes have heretofore been prepared there shall be no necessity to repeat the same in the absence of public necessity therefor, but same may be amended, added to or taken from as the facts of public need may demand.

#### Inventory and Appraisal of Equipment; Disposal and Purchase

Sec. 3. The county engineer shall at the end of every 12 months, acting in conjunction with each commissioner of the county, make a complete inventory and appraisal of all tools, machinery, equipment, materials, trucks, cars, and other property owned by the respective commissioners, and transmit the same in written form to the commissioners court and the county auditor, which report shall be kept as a permanent inventory record by the county auditor. When any of said tools, machinery, trucks, cars, and other property becomes unusable, the commissioners court shall enter an order upon the minutes of the court, stating such facts and reason for disposing of such equipment and shall have authority to dispose of same as it deems best. When in its opinion it is necessary to purchase other machinery, supplies, tools, and other equipment and materials, the commissioners court shall enter an order on the minutes showing the necessity therefor. All equipment purchased or acquired as herein specified, shall be shown on the permanent inventory record.

#### Master Plan

Sec. 4. The county engineer shall, when funds are available and when authorized by the commissioners court, to do so, make a careful and thorough study of all roads at that time opened and constructed with a view of determining what new roads and connections of roads should be opened and constructed, as well as what roads should be widened and improved. In making such survey, he should take into consideration the convenience of the traveling public, and especially the convenience of the citizenship of the county, so that each community a part of the county shall have easy and practical connection with the other and the state highway system of roads in the county, thereby furnishing to the citizenship of the

county a convenient means of ingress and egress into and out of every city and town, as well as every other community in the county. The roads indicated in such surveys to be opened and constructed, as well as existing roads that are designated to be widened and improved, shall be located and designated with the view of giving the entire county an efficient road system. The commissioners court shall, in selecting roads or new roads, as well as the improvement of existing roads, look to the density of the population and amount of traffic that will normally flow over such roads; such survey when completed by the engineer, and when adopted by the commissioners court at a regular meeting thereof, shall be known as the Master Plan. When such Master Plan has been completed and adopted by the court as it is stipulated, the same shall be made into permanent record form and kept by the county engineer, and after such adoption, all new construction, widening and permanent improvement shall be done in accordance with such Master Plan and with the view of ultimately completing the same, both as to location and character of construction. The construction of said Master Plan shall proceed as the available funds of the county will permit, and each unit of such construction shall be made in accordance with such Master Plan. The order in which the roads or projects in the construction of said Master Plan are constructed shall be determined by the county engineer, with the approval of the commissioners court and in determining the priority of roads or projects, the engineer and court shall take into consideration the necessity and convenience of the public and should give priority to those roads or projects that will result in the greatest service to the greatest number of the citizenship of the county, looking at all times to the entire county as a unit and wholly disregarding precinct lines.

#### Adoption and Amendment of Master Plan

Sec. 5. The commissioners court shall when said Master Plan is submitted to them for adoption, or if after adoption, an amendment or change thereto shall be deemed advisable, set a date at a regular meeting of commissioners court called for that purpose, and give public notice thereof at least two weeks in advance of such meeting and the purpose thereof, inviting the citizenship of the county to be present to protest any part of said Master Plan and also to make such suggestions as they deem pertinent in connection with same, or any change therein, but the decision of the commissioners court shall become and be final and conclusive as to said Master Plan, and no succeeding commissioners court shall have the power or authority to alter or change or amend any of the provisions thereof except by unanimous vote of the commissioners court. Provided, that where such Master Plan has once been adopted, there shall be no necessity to repeat the same in absence of public necessity thereof, for same may be amended and altered

when public necessity therefor is shown, and after notice is given as herein above provided.

#### Subdivisions

Sec. 6. It shall be the duty of the county engineer and the commissioners court in each respective precinct to cause the Master Plan to be conformed to the needs and demands of existing and new subdivisions by constructing adequate highways leading from such subdivisions to the county seat. Provided that from and after the passage of this Act, the commissioners court, before approving the plan or plans of any subdivision lying outside the corporate limits of any city, town, or village, as required by Article 6626, Revised Civil Statutes of Texas, 1925, as amended, shall require such subdivision to enter into a written contract in agreement with the county, then such subdivider or dirt dealer will grade, and gravel all streets and provide all necessary drainage structures within such tract of land so subdivided. Such street improvements and drainage structures shall be in accordance with standard plans and specifications prepared by the county engineer. Such contracts shall be for the benefit of any person or persons, firm or corporation who may thereafter acquire by purchase or otherwise any lot or lots in said addition or subdivision, and the faithful performance of said contract as to the initial improvements of said streets shall be deemed a part of the consideration paid for said lot and be read into the contract of sale of same, and such contract shall be enforceable at the instance, if necessary, of the owner or owners of any lot or lots in a given subdivision, suing singularly or as a group or class. After such initial street improvements have been completed in accordance with such plans, said streets then become and remain a part of the county road system and shall be maintained by the county unless and until included within the corporate limits of a city, town or village capable of maintaining its own streets.

#### Inspections of Plats, Subdivision Plans and Land Encompassed; Advice to Commissioners Court and Developers

Sec. 7. The county engineer when directed to do so by the commissioners court of the county, shall inspect all plats and plans of subdivisions to be recorded within said county, and make an on-site inspection of the land encompassed within said subdivision and advise the court as to the roads, drainage, sewage, and all aspects of said subdivision and terrain. The county engineer when and if required by the commissioners court, shall affix his signature to said plat along with the county judge and the commissioners court upon any plat approved and accepted by the commissioners court and filed in the county clerk's office. The county engineer will offer advice and suggestions to said developer and commissioners court in order to promote conformity with any and all rules and regulations for subdividing as laid out by the commissioners court.

#### Inspection of Various Utility Districts Within County; Map

Sec. 8. The county engineer when directed by the commissioners court shall make such inspections of any and all utility districts, water districts, sewage districts, and any other type district formed within the confines of the county, to ascertain whether or not said districts meet the state and county requirements. The county engineer will keep a map setting out each and every type district created within the county and make it available for public use at any and all times required to do so.

#### Assistance on County Functions

Sec. 9. The county engineer when requested to do so by the commissioners court or by a commissioner shall assist said commissioner in connection with any county road in said county, any drainage problem, public buildings, health and sanitation district, planning commissions, and any other function or service over which the commissioner or commissioners court might have jurisdiction.

#### Employees

Sec. 10. The commissioners court shall employ all help necessary for the discharge of their public service or for the discharge of the duties of the county engineer. Such employees shall receive such compensation as may be fixed by the court, but in all such cases an order shall be passed and entered on the minutes of the court, showing in such case the public necessity for such employment and the amount of compensation to be paid each employee and the fund out of which it is to be paid.

#### Work Records; Daily Time Sheet

Sec. 11. The county engineer shall keep or cause to be kept, in duplicate, a daily time sheet which shall show the amount of time and the character of work performed and the place where the same is performed by himself and each person working for the county engineer, and such other records in connection therewith as the commissioners court and county auditor may require, one copy of which shall be furnished to the county auditor, and one copy shall be retained by the engineer.

#### County Commissioners; Duties

Sec. 12. This Act shall in no way diminish, alter or eliminate any of the duties presently handled by the commissioners court or by any individual commissioner. Each member of the commissioners court shall be and he is hereby required to devote all of his time unless prevented by illness to the duties of his office, and shall be in attendance at all sessions of the court.

#### Cumulative Effect; Conflict or Inconsistency

Sec. 13. The provisions of this Act are and shall be held and construed to be cumulative of all general laws or special laws of this state on the subject treated in this Act when not in conflict or inconsistent herewith, but in case of

such conflict or inconsistency in whole or in part, this Act shall control.

**Severability**

Sec. 14. If any section, subdivision, paragraph, sentence, clause, or word in this Act shall be held to be unconstitutional, the remaining portions of same shall nevertheless be valid and it is declared that such remaining portions would have been included in this Act though the unconstitutional portion had been omitted.

**County Engineer; Release From Position**

Sec. 15. If at any time the commissioners court at any time feels that the county engineer position is no further of any necessity or benefit to the county, then said commissioners court has the authority to release said engineer without any obligation to fill said position or vacancy.

[Acts 1971, 62nd Leg., p. 2483, ch. 809, eff. June 8, 1971.]

**Art. 6812c. Building or Set-Back Lines; Adjacent Counties of 350,000**

**Establishment of Set-Back Lines on Major Highways and Roads**

Sec. 1. Whenever the Commissioners Court in any county having a population of not less than 350,000 according to the last Federal Decennial Census and which is adjacent to another county having a population of not less than 350,000 according to the last Federal Decennial Census, deems that the general welfare will be promoted thereby, it is hereby authorized and empowered to establish building lines or set-back lines on major highways and roads in such county, not to exceed one hundred fifty (150) feet from the center line of such major highways and roads, and to prohibit any new building being located within such building or set-back lines outside of the corporate limits of any city, village or incorporated town. Such Commissioners Court is further authorized and empowered to regulate and limit and to change and amend by order such building or set-back lines on such major highways or roads and to prohibit any new buildings being located within such building or set-back lines outside the corporate limits of any city, village or incorporated town.

**Hearing and Adoption of Plan; Amendment or Alteration**

Sec. 2. Before the adoption of any plan for major highways and the establishing of building or set-back lines thereon the Commissioners Court shall hold at least one public hearing related thereto, fifteen days notice of the time and place of which shall be published in at least one newspaper having general circulation within the county. Such hearing may be adjourned from time to time. Adoption of the major highway plan shall be by resolution carried by not less than a majority vote of the full membership of the court. The establishment of building or set-back lines shall be by order passed by not less than a majority vote of the

full membership of the court. After adoption of a major highway plan or plans an attested copy shall be filed with the County Clerk. Thereafter, the Commissioners Court may upon like approval, publication and notice change, amend, supplement or alter the major highway plan and building lines relating thereto.

**Notice; Failure to Begin Construction**

Sec. 3. The property owners of all property fronting upon any major highway or road on which a building line or set-back line has been established shall be charged with notice of the requirement of the building line order. All building lines established pursuant to this Act shall be shown in a general manner upon a map and the same shall be filed with the County Clerk and notice thereof shall be published in at least one newspaper having general circulation within the county, and such notice shall also be posted in at least three conspicuous places along each highway affected; provided, however, that in the event the county should fail to begin the construction of the improvement or widening of the road on which any building or set-back line has been established within four (4) years from the date when said building or set-back line had been fixed, such designation of the building or set-back line shall cease and be of no force or effect unless the time is extended therefor by agreement of the county and the property owners interested.

**Board of Adjustment**

Sec. 4. The Commissioners Court is hereby authorized and empowered to appoint a Board of Adjustment. Such Board shall consist of five (5) freeholders of such county. The membership of the first Board appointed shall serve respectively: two members for one year, and three members for two years. Thereafter members shall be appointed for terms of two years. Members shall be removable for cause by the Commissioners Court upon written charge after public hearings. Vacancies shall be filled by the Commissioners Court for the unexpired term of any member whose term becomes vacant. The Board of Building Line Adjustment shall elect its own chairman and shall adopt rules of procedure. All meetings of the Board shall be open to the public and minutes shall be kept and filed in the office of the Board and shall be a public record. Said Board of Adjustment shall have the following powers and it shall be its duty to modify or vary the regulations affecting building lines or set-back lines in specific cases, subject to appropriate conditions and safeguards in cases where unnecessary hardship may result from a literal enforcement of such building line or set-back line requirements, so that substantial justice may be done and the intent and purpose of the regulations to protect the public welfare and public safety observed:

Such Board of Adjustment shall hear and decide appeals where, by reason of exceptional narrowness, shallowness, shape, topography, existing building development or other excep-

tional and extraordinary situation or condition of a specific piece of property, the strict application of a building line established under this Act would result in peculiar and exceptional difficulties to, or hardship to, the owner of such property, to authorize upon an appeal relating to such property, a variance from the strict application under such conditions as such Board of Adjustment may impose so as to relieve the hardship or difficulties, provided such relief can be granted without substantially impairing the intent and purpose of the building line or set-back line.

The Board of Adjustment shall, with appropriate safeguards, authorize the construction of improvements or structures which may encroach on any building or set-back line established under this Act; provided, however, that should the county proceed with the projected improvement of the road within the time specified herein, then the owner of such improvements will be required to remove the same without cost to the county whatsoever.

#### Violation of Line; Injunction or Abatement

Sec. 5. In case any building or structure is erected, constructed or reconstructed in violation of any building line or set-back line adopted by any Commissioners Court pursuant to this Act, then such court, the District Attorney or County Attorney, as the case may be, any owner of real property within the county in which such building or structure is located may institute injunction, mandamus, abatement, or any appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction or reconstruction.

#### Appeals

Sec. 6. Any property owner who feels injured or damaged by any Act or order of the Board of Adjustment may appeal within thirty days from such act or order to the Commissioners Court of such county. Any property owner in such county who feels injured or damaged by any final order of such Board of Adjustment or by any final order of such Commissioners Court shall have and is hereby given the right to appeal from such order to the District Court or to any other court having jurisdiction thereof, provided that such appeal shall be made within thirty days from the date of such order; and provided further that such appellant shall execute an appeal bond in an amount fixed by such court.

[Acts 1953, 53rd Leg., p. 704, ch. 269.]

#### Art. 6812d. Private Roads; Construction and Maintenance in Certain Counties

Sec. 1. The county Commissioners Court of a county which has more than 5,300 persons but fewer than 5,500 persons, of a county which has more than 7,200 persons but fewer than 7,600 persons, of a county which has more than 10,600 persons but fewer than 11,000 persons, of a county which has more than 11,860 persons but fewer than 12,000 persons, of a county which has more than 18,120 persons but

fewer than 18,500 persons, of a county which has more than 15,500 persons but fewer than 15,700 persons, and of a county which has more than 45,000 persons but fewer than 46,000 persons, all according to the last preceding federal census, by order, may authorize a commissioner of the county to direct the use of county employees and equipment to construct and maintain any private road in his precinct, when requested to do so in writing by a person owning an interest in the private road or in the land on which the private road is to be constructed.

Sec. 2. A county commissioner who uses county employees and equipment under an order provided for in Section 1 of this Act shall, on behalf of the county, charge persons requesting the use of the employees and equipment for the use. The county commissioner shall charge an amount equal to the prevailing charges for like work in the same area. Money collected under this Section shall be paid to the county treasurer and credited to the county road and bridge fund to be used in the precinct in which the work is done.

Sec. 3. The county commissioners court, by order, shall prescribe the kinds of records that are to be maintained under this Act and the manner in which the records are maintained. The records shall be filed with the county commissioners court at the meeting of the county commissioners court following the date on which the use of the employees and equipment ends.

Sec. 4. Records maintained under Section 3 of this Act are public records open to inspection by a member of the public at any reasonable time.

[Acts 1965, 59th Leg., p. 304, ch. 137, eff. May 13, 1965; Acts 1971, 62nd Leg., p. 1829, ch. 542, § 52, eff. Sept. 1, 1971.]

#### Art. 6812e. Private Roads; Construction and Maintenance in Counties of 8,040 to 8,055

Sec. 1. The commissioners court of any county with a population of not less than 8,040 nor more than 8,055 according to the last preceding federal census may by order authorize a commissioner of the county to use county employees and equipment to construct, maintain, or improve a private road in his precinct when requested to do so in writing by a person owning an interest in the private road or in the property on which the private road is to be constructed, maintained, or improved.

Sec. 2. (a) A county commissioner who uses county employees and equipment under an order provided for in Section 1 of this Act shall, on behalf of the county, charge persons requesting the use of the employees and equipment for the use of the employees and equipment.

(b) The charges shall be an amount established by the commissioners court but not less than prevailing charges for like work in the area.

(c) Money collected under this section shall be paid to the county treasurer and credited to the county road and bridge fund to be used in the precinct in which the work is done.

Sec. 3. No county commissioner may authorize any work for which the charges will exceed \$200 nor may he authorize any work for which professional contractor services are reasonably available.

Sec. 4. The commissioners court shall maintain public records of work done by county employees and equipment under this Act. The commissioners court may prescribe the type of records that will be maintained under this section.

[Acts 1971, 62nd Leg., p. 1619, ch. 448, eff. Aug. 30, 1971.]

# TITLE 117

## SALARIES

Article	Article
6813. Enumeration.	6819a-22. District Judges of 53rd, 98th and 126th Judicial Districts and Criminal District Court of Travis County; Additional Compensation.
6813a. Members of Railroad Commission.	6819a-23. Additional Compensation of District Court Judges of 49th Judicial District.
6813b. Salaries of State Officers and Employees for Biennium; Exceptions.	6819a-23a. Additional Compensation of District Court Judge of 49th Judicial District.
6814. Bureau of Labor Statistics.	6819a-24. Additional Compensation of District Court Judges of Pecos, Upton, Crockett and Sutton Counties.
6815. Repealed.	6819a-25. Additional Compensation of Judges of District and Criminal District Courts in Counties With Population of 600,000 or More.
6816. Perquisites.	6819a-25a. Additional Compensation of Judges of District and Criminal District Courts in Counties of 1,200,000 to 1,500,000.
6817. Lieutenant Governor.	6819a-26. Additional Compensation of Judges of District and Criminal District Courts of Tarrant County.
6818. Repealed.	6819a-27. Additional Compensation of District Court Judge of 142nd Judicial District.
6819. Courts.	6819a-28. Additional Compensation of District Court Judges of 10th, 56th, 122nd and 212th Judicial Districts.
6819-1. Reporter's Salary.	6819a-29. Additional Compensation of District Court Judge of 49th Judicial District.
6819a. Repealed.	6819a-30. Additional Compensation of District Court Judge of 79th Judicial District.
6819a-1. Salary of State's Attorney Before Court of Criminal Appeals.	6819a-31. Payments to Defray Expenses of District Court Judge of 121st Judicial District.
6819a-2. Salaries of District Judges in Counties of 325,000 to 350,000.	6819a-32. Additional Compensation of District Court Judge of 64th Judicial District.
6819a-3. Additional Compensation of Judges of District Court; Counties of 159,000 to 600,000; Counties on International Boundary.	6819a-33. Additional Compensation of District Court Judge of 128th Judicial District.
6819a-4. Repealed.	6819a-34. Additional Compensation of District Court Judges of 72nd, 99th and 140th Judicial Districts.
6819a-5. Additional Compensation of Judges of District Courts and Criminal District Court in Counties Having Eight Courts.	6819a-35. Additional Compensation of District Court Judges of 85th and 13th Judicial Districts.
6819a-6. Repealed.	6819a-36. Additional Compensation of District Court Judges of 47th, 108th and 181st Judicial Districts.
6819a-7. Additional Compensation of District Judges in Judicial Districts of Five Counties, Two of Which Have Two or More District Courts.	6819a-37. Additional Compensation of District Court Judges of 69th and 84th Judicial Districts.
6819a-8. Salaries of District Court Judges in Counties of 225,000 to 390,000 With Four Civil District Courts and Two Criminal District Courts.	6819a-38. Additional Compensation for District Court Judges of 92nd, 93rd and 139th Judicial Districts.
6819a-9, 6819a-10. Repealed.	6819a-39. Additional Compensation for District Court Judges of 58th, 60th, 136th, 172nd Judicial Districts and Criminal District Court of Jefferson County.
6819a-11. Salaries of District Court Judges in Counties Comprising Judicial District of Not Less Than Four Counties.	6819a-40. Additional Compensation of County and District Court Judges in McLennan County.
6819a-12. Salaries of District Court Judges in 106th, 109th and 143rd Judicial Districts.	6819a-41. Additional Compensation for District Court Judge of 137th Judicial District.
6819a-12a. Salaries of District Judges in Counties of 325,000 to 350,000.	6819a-42. Additional Compensation for Judges of the 49th and 111th Judicial Districts.
6819a-13. Repealed.	6819a-43. Additional Compensation for Judge of the 143rd Judicial District.
6819a-13a. Additional Compensation for District Judge of 75th Judicial District.	6819a-44. Additional Compensation for Juvenile Judges of the 23rd and 130th Judicial Districts.
6819a-14. Additional Compensation of District Court Judge of 70th Judicial District.	6819b. Salaries of Court Officers.
6819a-15. 34th Judicial District; Additional Compensation for District Judge.	6819c. Expenditures for Law Books for Courts of Civil Appeals.
6819a-16. 65th Judicial District; Additional Compensation for District Court Judge.	6819d. Fees Deposited in General Revenue Fund.
6819a-17. 41st Judicial District; Additional Compensation for District Judge.	6819e. Repealed.
6819a-18. Salaries of Justices of Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, and District Court Judges.	6820. Judicial District Expenses.
6819a-18a. Additional Compensation for Justices of Courts of Civil Appeals.	6821. Special Judges.
6819a-19. Judges of District and Criminal District Courts in Counties of 800,000 or More Having 12 or More Civil District Courts and 3 or More Criminal District Courts.	
6819a-19a. Judges of District Courts in Counties of Not Less Than 600,000 Nor More Than 700,000.	
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6819a-19c. Additional Compensation of District Court Judges in Bexar County.	
6819a-20. Additional Compensation of District Court Judge of 16th Judicial District.	
6819a-21. First Judicial District; Additional Compensation for District Judge.	

Article

6822.	Salaries of Employés.
6822a.	State Employees Injured or Killed in Performance of Governmental Functions or While Exposed to Unavoidable Dangers; Payment of Expenses.
6823.	Repealed.
6823a.	Travel Regulations Act of 1959.
6824.	Change in Salary.
6825.	Salary of Women.
6826.	How Paid.
6826a.	Expired.
6827.	Evidence of Qualification.
6828.	Unauthorized Officers.
6829.	Other Salaries.
6829a.	Waiver of Pay by State or District Officers While on Military Duty.

Art. 6813. Enumeration

The following named officers, deputies, clerks and assistants in the employ of the State Government shall receive for their services the annual salaries set opposite their respective names:

Adjutant General	\$3600
Assistant Adjutant General	2000
Quartermaster	2000
Assistant Quartermaster General	2000
Agriculture—Commissioner of	3600
Chief Clerk Department of Agriculture	2000
Plant Pathologist Department of Agriculture	2100
Nursery Inspector Department of Agriculture	2000
Attorney General	2000
Banking Commissioner	6000
Deputy Banking Commissioner	5000
Comptroller	2500
Control—Each Member of Board of Governor	5000
Health Officer—State	4000
Assistant State Health Officer	4500
Chemist in Health Department	2400
Industrial Accident Board—Chairman	2100
Other Members of Industrial Accident Board	4500
Insurance—Commissioner of	4000
Each Other Member of State Insurance Commission	3600
Land Commissioner	2500
Librarian—State	2000
Live Stock Sanitary Commission—Chairman of	2500
Other Members of Live Stock Sanitary Commission	1250
Markets and Warehouses—Commissioner of	3600
Chief Clerk Markets and Warehouse Department	2000
Mining Inspector—State	2000
Pardons—Each Member of Board of	3000
Prosecuting Attorney—State	3600
Assistant State Prosecuting Attorney	3000
Public Instruction—State Superintendent of	4000
Railroad Commission—Each Member of	4000

Reclamation Engineer—State <sup>1</sup>	\$3600
State—Secretary of	2000
Tax Commissioner—State	2500
Treasurer—State	2500
Vital Statistics—Registrar of	2400
Deputy Registrar of Vital Statistics	1500
Water Engineers—Each Member of Board of	3600
Game Commissioner	3600

[Acts 1925, S.B. 84.]

<sup>1</sup> Office abolished. See article 5421h-1.

Art. 6813a. Members of Railroad Commission

From and after the passage of this Act the salary of the members of the Railroad Commission of Texas, in addition to the salary at present fixed by law, shall be two thousand (\$2000.00) Dollars each per annum, one thousand (\$1000.00) Dollars each per annum payable out of the fund created under Article 6032 of the Revised Civil Statutes of the State of Texas, and one thousand (\$1000.00) Dollars each per annum payable out of the fund created under Article 6060 of the Revised Civil Statutes of the State of Texas. This sum shall be paid in monthly installments, as other state salaries are paid, and shall be appropriated by the Legislature, as provided by law. The sum of Three Thousand Six Hundred (\$3600.00) Dollars is hereby appropriated proportionately out of the two respective funds to cover the increase in salary for the remainder of the fiscal year ending August 31, 1927.

[Acts 1927, 40th Leg., p. 416, ch. 277, § 1.]

Art. 6813b. Salaries of State Officers and Employees for Biennium; Exceptions

Sec. 1. From and after the effective date of this Act, all salaries of all State officers and State employees, including the salaries paid any individual out of the General Revenue Fund, shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act.<sup>1</sup> It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals. It is further provided that in instances where the biennial Appropriations Act does not specify or regulate the salaries or compensation of a State official or employee, the law specifying or regulating the salary or compensation of such official or employee is not suspended by this Act.

Sec. 2. All laws and parts of laws fixing the salaries of all State officers and employees, saving only the exception specified in Section 1 of this Act and the Position Classification Act of 1961 (Chapter 123, Acts 1961, Fifty-seventh Legislature, Regular Session),<sup>2</sup> are hereby specifically suspended insofar as they are in conflict with this Act. It is specifically declared to be one of the intents hereof

that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals, are suspended insofar as they are in conflict with this Act.

[Acts 1965, 59th Leg., p. 118, ch. 46, §§ 1, 2.]

<sup>1</sup> Acts 1965, 59th Leg., p. 118, ch. 46.

<sup>2</sup> Article 6252-11.

Similar provisions for prior bienniums were enacted as follows:

Acts 1933, 43rd Leg., p. 59, ch. 30.  
 Acts 1935, 44th Leg., p. 124, ch. 48.  
 Acts 1937, 45th Leg., p. 1339, ch. 497.  
 Acts 1939, 46th Leg., p. 619.  
 Acts 1941, 47th Leg., p. 813, ch. 503.  
 Acts 1943, 48th Leg., p. 415, ch. 282.  
 Acts 1945, 49th Leg., p. 652, ch. 362.  
 Acts 1947, 50th Leg., p. 1028, ch. 441.  
 Acts 1949, 51st Leg., p. 75, ch. 43.  
 Acts 1951, 52nd Leg., p. 811, ch. 455.  
 Acts 1953, 53rd Leg., p. 451, ch. 136.  
 Acts 1955, 54th Leg., p. 437, ch. 118.  
 Acts 1957, 55th Leg., p. 5, ch. 4.  
 Acts 1959, 56th Leg., p. 144, ch. 85.  
 Acts 1961, 57th Leg., p. 212, ch. 110.  
 Acts 1963, 58th Leg., p. 947, ch. 375.

#### Art. 6814. Bureau of Labor Statistics

The Commissioner of Labor Statistics shall receive a salary of \$3,000.00 per annum; and he shall be allowed a secretary at a salary of \$1,800.00 per annum; an assistant secretary and stenographer at a salary of \$1,500.00 per annum; a chief deputy at a salary of \$2,000.00 per annum; six deputies at a salary of \$1,800.00 each per annum; a chief of the Woman's Division at a salary of \$2,000.00 per annum; and two women inspectors at a salary of \$1,800.00 each per annum.

[Acts 1925, S.B. 84.]

#### Art. 6815. Repealed by Acts 1929, 41st Leg., p. 513, ch. 248, § 1

#### Art. 6816. Perquisites

The Governor shall have the use and occupation of the Governor's Mansion, fixtures and furniture. The Attorney General shall receive such fees as may be prescribed by law, not to exceed \$2,000.00 annually. The Commissioner of Insurance shall receive an annual salary of \$500.00 for his services to the State Insurance Commission. Said Commissioner shall receive \$50.00 per annum for services as a member of the State Insurance Commission for services as to workmens' compensation insurance, and each of the other members of said Commission shall receive \$100.00 per annum for such services.

[Acts 1925, S.B. 84.]

#### Art. 6817. Lieutenant Governor

The Lieutenant Governor shall, while he acts as president of the Senate, receive for his services the same compensation and mileage allowed to members of the Senate, and no more; and when acting as Governor, the same compensation which the Governor would have received had he been employed in the duties of his office, and no more.

[Acts 1925, S.B. 84.]

#### Art. 6818. Repealed by Acts 1931, 42nd Leg., p. 8, ch. 6, § 1

#### Art. 6819. Courts

The Judges of the Supreme Court, Commission of Appeals, and the Court of Criminal Appeals shall each be paid an annual salary of \$6,500.00. The judges of the several Courts of Civil Appeals shall each be paid an annual salary of \$5,000.00. The Judges of the District Courts shall each be paid an annual salary of \$4,000.00. The clerks of the Courts of Civil Appeals shall each receive an annual salary of \$3,000.00, and may employ a deputy at an annual salary of \$1,500.00. Each stenographer to each Court of Civil Appeals shall receive \$1,500.00 per annum. The reporter of the Supreme Court and the reporter and the clerk of the Court of Criminal Appeals shall each receive an annual salary of \$3,000.00.

[Acts 1925, S.B. 84.]

#### Art. 6819-1. Reporter's Salary

On and after the passage of this Act, the Reporter of the Court of Criminal Appeals of Texas shall receive as compensation for his services the sum of Four Thousand Dollars per annum.

[Acts 1927, 40th Leg., p. 207, ch. 138, § 1.]

#### Art. 6819a. Repealed by Acts 1947, 50th Leg., p. 54, ch. 42, § 2

#### Art. 6819a-1. Salary of State's Attorney Before Court of Criminal Appeals

The State's Attorney before and in Aid of the Court of Criminal Appeals shall be paid an annual salary of Six Thousand (\$6,000.00) Dollars, payable in equal monthly installments.

[Acts 1927, 40th Leg., p. 411, ch. 273, § 1-a; Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

#### Art. 6819a-2. Salaries of District Judges in Counties of 325,000 to 350,000

The District Judges of counties having a population of 325,000 and not over 350,000 according to the last preceding Federal Census shall receive the salary of Seven Thousand and Five Hundred (\$7,500.00) Dollars per year including the salary as Juvenile officers; providing that only Five Thousand (\$5,000.00) Dollars be paid out of State Funds and Two Thousand Five Hundred (\$2,500.00) Dollars out of County Funds.

[Acts 1927, 40th Leg., p. 411, ch. 273, § 1-b; Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

#### Art. 6819a-3. Additional Compensation of Judges of District Court; Counties of 159,000 to 600,000; Counties on International Boundary

Sec. 1. In all counties in this State having a population of not less than one hundred fifty-nine thousand (159,000) nor more than six hundred thousand (600,000) inhabitants, according to the last preceding or any future Federal Census, the Judges of the several District Courts and Criminal District Courts shall

each receive annually, payable in monthly installments, the sum of Two Thousand, Nine Hundred (\$2,900.00) Dollars to be paid by said counties out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by them, and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of State revenues.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal all or any part of Article 5139, Revised Civil Statutes of Texas of 1925, as amended, or Article 5142a, Civil Statutes of Texas, as amended by Chapter 27, Acts 51st Legislature, 1949, or Article 5142b, Civil Statutes of Texas, as amended by Chapters 66 and 339, Acts 51st Legislature 1949, except insofar as the same now apply to counties having a population of not less than one hundred fifty-nine thousand (159,000) nor more than six hundred thousand (600,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that the several Judges of the District Courts and Criminal District Courts in said counties shall not receive any salary as provided in Article 5139, Revised Civil Statutes of Texas of 1925, with amendments thereto, or under Article 5142a, Civil Statutes of Texas as amended by Chapter 27, Acts 51st Legislature, 1949, or under Article 5142b, Civil Statutes of Texas, as amended by Chapters 66 and 339, Acts 51st Legislature, 1949, for any month wherein they shall have received the salary herein provided to be paid out of the General Fund of said counties; and provided further, that no District Judge in counties having a population of not less than one hundred fifty-nine thousand (159,000) nor more than six hundred thousand (600,000) inhabitants, shall receive from any county funds as supplemental pay to his salary from the State, a sum in excess of Two Thousand, Nine Hundred (\$2,900.00) Dollars per annum from the county for judicial and administrative duties assigned to them.

Sec. 2A. In all counties in this State bordering on the international boundary between Mexico and the United States and having a population of not less than fifty-five thousand (55,000) inhabitants according to the last preceding Federal Census, the Judge or Judges of the several District Courts and Criminal District Courts, as the case may be, may each receive annually, payable in monthly installments, the sum of Two Thousand, Nine Hundred (\$2,900.00) Dollars to be paid by the county having such population, out of the general fund thereof, as compensation for all judicial and administrative services, including those as members of the Juvenile Board of said counties, now rendered, and any additional judicial administrative services hereafter to be assigned to it or them, as the case may be, in addition to all salary paid or hereafter to be paid by the State of Texas out of the State revenues.

Sec. 3. If any section, subsection, paragraph, sentence, clause or provision of this law be declared unconstitutional or invalid by the Courts, it shall not affect the constitutionality or validity of the remainder thereof, and it is hereby declared that this Act would nevertheless have been passed without such section, or subsection, or clause so declared unconstitutional.

[Acts 1945, 49th Leg., p. 271, ch. 200; Acts 1951, 52nd Leg., p. 485, ch. 303.]

Art. 6819a-4. Repealed by Acts 1949, 51st Leg., p. 614, ch. 328, § 2

Art. 6819a-5. Additional Compensation of Judges of District Courts and Criminal District Court in Counties Having Eight Courts

Sec. 1. In all counties in this State having eight (8) or more District Courts, the Judges of the several District Courts and Criminal District Courts shall each receive annually, payable in monthly installments, the sum of Three Thousand, Nine Hundred Dollars (\$3,900), to be paid by said counties out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by them and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of State revenues.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal all or any part of Article 5139, Revised Civil Statutes of Texas of 1925, (as amended by the Acts of 1945, Chapter 268, p. 422, Regular Session Laws of the Forty-ninth Legislature), or Article 5142-A, Section 1-a (same being Section 1-a of the Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 156, p. 401, or Article 6819a-3, Revised Civil Statutes, same being Chapter 200, p. 271 of the Acts of 1945, Forty-ninth Legislature, Regular Session) in so far as same now apply to counties having eight (8) or more District Courts; providing, however, that the several Judges of the District Courts and Criminal District Courts in said counties shall not receive any salary as provided in Article 5139, Revised Civil Statutes of Texas of 1925, (as amended by the Acts of 1945, Chapter 268, p. 422, Regular Session Laws of the Forty-ninth Legislature), or under Article 5142-a, Section 1-a, (same being Section 1-a of the Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 156, p. 401, or Article 6819a-3, Revised Civil Statutes, same being Chapter 200, p. 271 of the Acts of 1945, Forty-ninth Legislature, Regular Session) for any month wherein they shall have received the salary herein provided to be paid out of the General Fund of said counties.

Sec. 3. If any section, subsection, paragraph, sentence, clause or provision of this law be declared unconstitutional or invalid by the Courts, it shall not affect the constitutionality

or validity of the remainder thereof, and it is hereby declared that this Act would nevertheless have been passed without such section, or subsection, or clause so declared unconstitutional.

[Acts 1949, 51st Leg., p. 178, ch. 96.]

**Art. 6819a-6. Repealed by Acts 1951, 52nd Leg., p. 669, ch. 386, § 2**

**Art. 6819a-7. Additional Compensation of District Judges in Judicial Districts of Five Counties, Two of Which Have Two or More District Courts**

Sec. 1. In every county in this State which comprises a part of a judicial district consisting of not less than five (5) counties, of which two (2) of said counties have two (2) or more district courts, the district judge, or district judges, may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all judicial and administrative services now rendered by said judge, or judges, and any additional judicial and administrative services hereafter to be assigned to said judge, or judges, in addition to all salary paid or hereafter to be paid to said judge, or judges, by the State of Texas out of State revenues; provided, however, that the salary herein authorized to be paid by any county Commissioners Court to any judge shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) per annum; and provided that the total remuneration to be received by any judge under the provisions hereof shall not exceed the sum of Two Thousand, Nine Hundred Dollars (\$2,900) per annum.

Sec. 2. If any section, subsection, paragraph, sentence, clause or provision of this law be declared unconstitutional or invalid by the courts, it shall not affect the constitutionality or validity of the remainder thereof, and it is hereby declared that this Act would nevertheless have been passed without such section, or subsection, or clause so declared unconstitutional.

[Acts 1951, 52nd Leg., p. 394, ch. 252.]

**Art. 6819a-8. Salaries of District Court Judges in Counties of 225,000 to 390,000 With Four Civil District Courts and Two Criminal District Courts**

Sec. 1. In all counties in this State having not less than four (4) Civil District Courts and two (2) Criminal District Courts and having a population of not less than two hundred and twenty-five thousand (225,000) inhabitants and not more than three hundred and ninety thousand (390,000) inhabitants according to the last preceding and any future Federal Census, general or special, the Judges of the several District Courts, Civil and Criminal, shall each receive annually, payable in monthly installments, the sum of Three Thousand, Nine Hundred Dollars (\$3,900) to be paid by said coun-

ties out of the General Fund thereof as compensation for all judicial and administrative services now rendered by them and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of State revenues.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal all or any part of Article 5139, Revised Civil Statutes of Texas of 1925 (as amended), or Article 5142-a, Section 1-a (as amended), in so far as the same now applies to counties having a population of not less than two hundred and twenty-five thousand (225,000) inhabitants and not more than three hundred and ninety thousand (390,000) inhabitants and having four (4) Civil District Courts and two (2) Criminal District Courts; providing, however, that the several Judges of the District Courts, Civil and Criminal, in said county or counties, shall not receive any salary as provided for under Article 5139, Revised Civil Statutes of Texas of 1925 (as amended), or under Article 5142-a, Section 1-a (as amended), for any month wherein they shall have received the salary herein provided to be paid out of the General Fund of said counties.

[Acts 1951, 52nd Leg., p. 404, ch. 255.]

**Arts. 6819a-9, 6819a-10. Repealed by Acts 1957, 55th Leg., p. 606, ch. 272, § 3**

**Art. 6819a-11. Salaries of District Court Judges in Counties Comprising Judicial District of Not Less Than Four Counties**

In every county in this State which comprises a part of a judicial district consisting of not less than four (4) counties, of which two (2) of said counties have two (2) or more district courts, the district judge, or district judges, may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all judicial and administrative services now rendered by said judge, or judges, and any additional judicial and administrative services hereafter to be assigned to said judge, or judges, in addition to all salary paid or hereafter to be paid to said judge, or judges, by the State of Texas out of State revenues; provided, however, that the salary herein authorized to be paid by any county Commissioners Court to any judge shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) per annum; and provided that the total remuneration to be received by any judge under the provisions hereof shall not exceed the sum of Two Thousand, Nine Hundred Dollars (\$2,900) per annum.

[Acts 1955, 54th Leg., p. 1234, ch. 493, § 1.]

**Art. 6819a-12. Salaries of District Court Judges in 106th, 109th and 143rd Judicial Districts**

In the 106th, 109th and 143rd Judicial Districts, the district judge, or district judges,

may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all judicial and administrative services now rendered by said judge, or judges, and any additional judicial or administrative services hereafter to be assigned to said judge, or judges, in addition to all salaries paid or hereafter to be paid to said judge, or judges, by the State of Texas, out of state revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to any judge shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) per annum; and provided that the total remuneration to be received by any judge under the provisions hereof shall not exceed the sum of Two Thousand, Nine Hundred Dollars (\$2,900) per annum.

[Acts 1957, 55th Leg., p. 52, ch. 30, § 1.]

**Art. 6819a-12a. Salaries of District Judges in Counties of 325,000 to 350,000**

In the 109th Judicial District, the District Judge may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by said Judge, and any additional judicial or administrative services hereafter to be assigned to said Judge, in addition to all salaries paid or hereafter to be paid to said Judge by the State of Texas, out of state revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to any Judge shall not exceed the sum of Eighteen Hundred Dollars (\$1800.00) per annum.

[Acts 1959, 56th Leg., 3rd C.S., p. 379, ch. 4, § 1; Acts 1963, 58th Leg., p. 623, ch. 229, § 1.]

**Art. 6819a-13. Repealed by Acts 1971, 62nd Leg., p. 826, ch. 91, § 3, eff. April 28, 1971**

**Art. 6819a-13a. Additional Compensation for District Judge of 75th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the state, the commissioners courts of Liberty and Chambers counties are hereby authorized to pay the district judge of the 75th Judicial District, for services rendered to those counties and for performing administrative duties, a reasonable sum not to exceed \$6,000 a year.

Sec. 2. The supplementary compensation provided for in Section 1 shall be paid by the counties on a pro rata basis according to the population of each county as determined by the last preceding federal census.

[Acts 1971, 62nd Leg., p. 825, ch. 91, §§ 1, 2, eff. April 28, 1971.]

**Art. 6819a-14. Additional Compensation of District Court Judge of 70th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the State, the Com-

missioners Court of Ector County is hereby authorized to pay the District Judge of the 70th Judicial District for services rendered to Ector County and for performing administrative duties, a reasonable sum not to exceed Three Thousand, Five Hundred Dollars (\$3,500) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 70th Judicial District.

[Acts 1957, 55th Leg., p. 205, ch. 93.]

**Art. 6819a-15. 34th Judicial District; Additional Compensation for District Judge**

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Hudspeth, Culberson and El Paso Counties is hereby authorized to pay the District Judge of the 34th Judicial District for services rendered to Hudspeth, Culberson and El Paso Counties and for performing administrative duties, a reasonable sum not to exceed Five Thousand Dollars (\$5,000.00) per annum, providing, however, such sum shall be apportioned by the aforesaid three counties.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 34th Judicial District.

[Acts 1957, 55th Leg., p. 307, ch. 138.]

**Art. 6819a-16. 65th Judicial District; Additional Compensation for District Court Judge**

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of El Paso County is hereby authorized to pay the District Judge of the 65th Judicial District for services rendered to El Paso County and for performing administrative duties, a reasonable sum not to exceed Five Thousand Dollars (\$5,000.00) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 65th Judicial District.

[Acts 1957, 55th Leg., p. 308, ch. 139.]

**Art. 6819a-17. 41st Judicial District; Additional Compensation for District Judge**

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of El Paso County is hereby authorized to pay the District Judge of the 41st Judicial District for services rendered to El Paso County and for performing administrative duties, a reasonable sum not to exceed Five Thousand Dollars (\$5,000.00) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 41st Judicial District.

[Acts 1957, 55th Leg., p. 309, ch. 140.]

**Art. 6819a-18. Salaries of Justices of Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, and District Court Judges**

**Sec. 1. Beginning September 1, 1957:**

(a) The Justices of the Supreme Court of the State of Texas and the Judges and the Commissioners of the Court of Criminal Appeals of the State of Texas shall each be paid an annual salary of Twenty Thousand Dollars (\$20,000.00).

(b) The Justices of the several Courts of Civil Appeals of the State of Texas shall each be paid an annual salary of Sixteen Thousand Dollars (\$16,000.00).

(c) The Judges of the several District Courts and of the Criminal District Courts of the State of Texas shall each be paid an annual salary of Twelve Thousand Dollars (\$12,000.00).

(d) The salaries herein provided shall be paid in equal monthly installments upon warrants drawn by the Comptroller upon the State Treasury.

(e) The salary of the State's Attorney before the Court of Criminal Appeals shall be Ten Thousand Dollars (\$10,000.00) per year.

**Sec. 2.** This Act shall not repeal any law which permits or requires any county in this state to pay a Judge of a District Court or of a Criminal District Court any supplemental salary or compensation out of county funds.

[Acts 1957, 55th Leg., p. 606, ch. 272.]

**Art. 6819a-18a. Additional Compensation for Justices of Courts of Civil Appeals**

**Sec. 1.** In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Courts in the counties of each of the fourteen Supreme Judicial Districts of Texas are hereby each authorized to pay to each of the Justices of the Courts of Civil Appeals residing within said Supreme Judicial Districts for all judicial and administrative services performed by them a sum not to exceed Eight Thousand Dollars (\$8,000) per annum, to be paid in twelve equal monthly installments; provided, however, that the total of all sums so authorized to be paid to the individual Justices of the Courts of Civil Appeals shall not exceed the total additional compensation authorized to be paid to any District Judge residing within such affected Supreme Judicial District.

**Sec. 2.** The compensation provided for in Section 1 shall be in addition to the compensation provided by law and paid by the State of Texas to the various Justices of the Courts of Civil Appeals.

[Acts 1971, 62nd Leg., p. 1217, ch. 297, eff. May 24, 1971.]

**Art. 6819a-19. Judges of District and Criminal District Courts in Counties of 800,000 or More Having 12 or More Civil District Courts and 3 or More Criminal District Courts**

In any county in this state having a population of eight hundred thousand (800,000) or more, according to the last preceding federal census, and having twelve (12) or more Civil District Courts and three (3) or more Criminal District Courts, the Judges of the several District and Criminal District Courts of such counties shall receive in addition to the salary paid by the state to them and to other District Judges of this state, the sum of Six Thousand Dollars (\$6,000.00) annually, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of such counties. The Commissioners Court shall make proper budget provisions for the payment thereof. Any District Judge of the state who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Article 200-A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding judge in which said court is located.

[Acts 1959, 56th Leg., p. 111, ch. 60, § 1.]

**Art. 6819a-19a. Judges of District Courts in Counties of Not Less Than 600,000 Nor More Than 700,000**

In any county in this state having a population of not less than six hundred thousand (600,000) nor more than seven hundred thousand (700,000), according to the last preceding Federal Census, the Judges of the several District Courts of such counties shall receive, in addition to the salary paid by the state to them and to other District Judges of this state, a sum of money, to be approved by the Commissioners Court of said counties, of not less than Four Thousand, Five Hundred Dollars (\$4,500.) nor more than Six Thousand Dollars (\$6,000.) annually, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of such counties. The Commissioners Court may make proper budget provision for the payment thereof.

[Acts 1961, 57th Leg., p. 39, ch. 25, § 1.]

**Art. 6819a-19b. Judges of District Courts in Counties of 1,500,000 or More**

(a) In any county in this State having a population of 1,500,000 or more, according to the last preceding Federal Census, and having twenty-five or more district courts of general jurisdiction, the judges of the several district courts of such counties shall receive, in addition to the salary paid by the State to them,

and to other district judges of this State, a sum not less than \$12,000 nor more than \$17,000 annually, to be paid in equal monthly installments out of the General Fund or Officers' Salary Fund of such counties, such salary to be as compensation for all judicial and administrative services performed by them. The Commissioners Court shall make proper budget provision for the payment thereof. Any district judge of the State who may be assigned to sit for the judge of any district court in such counties under the provisions of Article 200-A, Vernon's Texas Civil Statutes, as amended, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by district judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding judge of the administrative district in which said court is located.

(b) In all counties of this State having a population of one million (1,000,000) or more, according to the last preceding Federal Census, and having eight (8) or more civil district courts and three (3) or more criminal district courts, the Commissioners Court of such counties shall fix the salary of the district attorney or criminal district attorney at not less than Fifteen Thousand Dollars (\$15,000) and not more than Eighteen Thousand Dollars (\$18,000) annually. Such salary shall be payable out of the Officers Salary Fund and/or General Fund of said counties in equal monthly installments.

[Acts 1961, 57th Leg., p. 772, ch. 359, § 1, eff. Aug. 28, 1961; Acts 1971, 62nd Leg., p. 1213, ch. 294, § 1, eff. May 20, 1971; Acts 1973, 63rd Leg., p. 518, ch. 222, § 1, eff. June 1, 1973.]

#### Art. 6819a-19c. Additional Compensation of District Court Judges in Bexar County

Sec. 1. The judges of the district courts of Bexar County shall receive, in addition to the salary paid by the State to them and to other District Judges of this State, the sum of \$12,000 annually subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of the county, for all services rendered to the county and for performing administrative services. The Commissioners Court shall make proper budget provisions for the payment thereof. Any District Judge of the State who may be assigned to sit for the judge of any district court in Bexar County under the provisions of Article 200a, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by District Judges in Bexar County, such amount to be

paid by the county upon approval of the presiding judge.

Sec. 2. The combined yearly salary rate from state and county sources of the judges of the district courts of Bexar County may not exceed an amount which is \$1,000 less than the combined yearly salary rate from state and county sources received by the judges of the Court of Civil Appeals in whose district Bexar County is located.

[Acts 1963, 58th Leg., p. 466, ch. 165, § 1, eff. May 14, 1963; Acts 1969, 61st Leg., p. 993, ch. 318, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1820, ch. 542, § 16, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 476, ch. 205, § 1, eff. Aug. 27, 1973.]

#### Art. 6819a-20. Additional Compensation of District Court Judge of 16th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Denton County is hereby authorized to pay the District Judge of the 16th Judicial District for services rendered to Denton County and for administrative duties, a reasonable sum not to exceed Two Thousand Four Hundred Dollars (\$2,400) per annum; and in addition to the compensation provided by law and paid by the State, the Commissioners Court of Cooke County is hereby authorized to pay the said District Judge of the 16th Judicial District for services rendered to Cooke County and for administrative duties, a reasonable sum not to exceed One Thousand Two Hundred Dollars (\$1,200) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 16th Judicial District.

[Acts 1959, 56th Leg., p. 121, ch. 69.]

#### Art. 6819a-21. First Judicial District; Additional Compensation for District Judge

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Court of Newton, Sabine, Jasper and San Augustine Counties, Texas, is hereby authorized to pay the District Judge of the 1st Judicial District for services rendered to Newton, Sabine, Jasper and San Augustine Counties, and for performing administrative duties, a reasonable sum not to exceed Three Thousand Dollars (\$3,000.00) per annum, provided, however, that such sum shall be apportioned by the aforesaid four counties.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 1st Judicial District.

[Acts 1959, 56th Leg., p. 129, ch. 75.]

#### Art. 6819a-22. District Judges of 53rd, 98th and 126th Judicial Districts and Criminal District Court of Travis County; Additional Compensation

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas,

the Commissioners Court of Travis County, Texas is hereby authorized to pay the District Judges of the 53rd Judicial District, 98th Judicial District, 126th Judicial District, and the Criminal District Court of Travis County, respectively, for services rendered to Travis County, and for performing administrative duties, a reasonable sum not to exceed Six Thousand Dollars (\$6,000.00) per annum to each of the judges of said courts.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid to the Judges of the 53rd Judicial District, 98th Judicial District, 126th Judicial District, and the Criminal District Court of Travis County, respectively.

Sec. 3. Any district judge of the state who may be assigned to sit for the Judge of the 53rd Judicial District, the 98th Judicial District, the 126th Judicial District or the Criminal District Court of Travis County, under the provisions of Article 200a, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount to be set by the Commissioners Court not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by the District Judges in Travis County, such amount to be paid by the county upon approval of the presiding Judge of the Administrative Judicial District in which said court is located.

[Acts 1959, 56th Leg., p. 141, ch. 83.]

**Art. 6819a-23. Additional Compensation of District Court Judges of 49th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Zapata County is hereby authorized to pay the District Judge of the 49th Judicial District, for additional services rendered to Zapata County as Judge of the Juvenile Court in such County and for performing administrative duties, a reasonable sum not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation now paid or authorized to be paid the District Judge of the 49th Judicial District.

[Acts 1959, 56th Leg., p. 481, ch. 210.]

**Art. 6819a-23a. Additional Compensation of District Court Judge of 49th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Jim Hogg County is hereby authorized to pay the District Judge of the 49th Judicial District, for additional services rendered to Jim Hogg County and for performing additional administrative duties, a reason-

able sum not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation now paid or authorized to be paid the District Judge of the 49th Judicial District. [Acts 1963, 58th Leg., p. 1006, ch. 412.]

**Art. 6819a-24. Additional Compensation of District Court Judges of Pecos, Upton, Crockett and Sutton Counties**

In addition to the compensation provided by law and paid by the State, the Commissioners Courts of Pecos, Upton, Crockett, and Sutton Counties may pay, and the District Judge, having jurisdiction in such County may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of such County out of the general fund thereof, as compensation for all judicial and administrative services rendered by said judge, or judges, in addition to all salaries paid or hereafter to be paid to said judge, or judges, by the State of Texas, out of State revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to the judge shall not exceed the sum of Two Thousand, Four Hundred Dollars (\$2,400) per annum; and provided that the total remuneration to be received by said judge under the provisions hereof shall not exceed the sum of Eight Thousand Dollars (\$8,000) per annum. [Acts 1959, 56th Leg., 2nd C.S., p. 148, ch. 33, § 1.]

**Art. 6819a-25. Additional Compensation of Judges of District and Criminal District Courts in Counties With Population of 600,000 or More**

In any County in this State which now has, or may hereafter have, a population of six hundred thousand (600,000) or more, according to the last preceding Federal Census, and having eight (8) or more Civil District Courts, three (3) Criminal District Courts, and at least one (1) Court of Domestic Relations and at least one (1) Juvenile Court, the Judges of the several District and Criminal District Courts of such Counties shall receive, in addition to the salary paid by the State to them and to other District Judges of this State, a sum of money, to be approved by the Commissioners Court, of not less than Four Thousand Dollars (\$4,000) nor more than Six Thousand Dollars (\$6,000) annually, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of such Counties. The Commissioners Court may make proper budget provision for the payment thereof. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such Counties under the provisions of Article 200-A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from County Funds in an amount not to exceed the difference between the pay of such visiting Judge from all sources and that pay received from all sources by Dis-

district Judges in the Counties affected by the provisions of this Act, such amount to be paid by the County upon approval of the presiding Judge in which said Court is located.

[Acts 1959, 56th Leg., 2nd C.S., p. 149, ch. 34, § 1.]

**Art. 6819a-25a. Additional Compensation of Judges of District and Criminal District Courts in Counties of 1,200,000 to 1,500,000**

In any county in this State having a population of 1,200,000 or more and not more than 1,500,000 according to the last preceding Federal Census, the Judges of the several District and Criminal District Courts of such counties shall receive, in addition to the salary paid by the State to them, and to other District Judges of this State, the sum of Twelve Thousand Dollars (\$12,000) annually, to be paid in equal monthly installments out of the general fund or Officers' Salary Fund of such counties. The Commissioners Court shall make proper budget provisions for the payment thereof. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting Judge from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding Judge of the Administrative District in which said Court is located.

[Acts 1961, 57th Leg., p. 437, ch. 311, § 1; Acts 1965, 59th Leg., p. 452, ch. 229, § 1; Acts 1971, 62nd Leg., p. 1946, ch. 588, § 2, eff. Aug. 30, 1971.]

**Art. 6819a-26. Additional Compensation of Judges of District and Criminal District Courts of Tarrant County**

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Court of Tarrant County, Texas, shall pay the sum of Eight Thousand Dollars (\$8,000) per annum, to be paid out of the general fund of said county, in equal monthly installments, to each of the judges of the District Courts and of the Criminal District Courts whose districts are comprised solely of Tarrant County, Texas, respectively, for all services rendered to Tarrant County, Texas, and for performing administrative duties.

Sec. 2. The compensation provided for in Section 1 hereof shall be in addition to all other compensation paid, or authorized to be paid, to the judges of the District Courts and of the Criminal District Courts of Tarrant County, respectively, by the State of Texas, and shall be in lieu of all other compensation for services heretofore allowed to be received by district judges from Tarrant County, Texas.

Sec. 2a. If the Chief Probation Officer of Tarrant County serves as Secretary to the Ju-

venile Board of Tarrant County, he may receive as compensation for this additional service the sum of One Thousand Dollars (\$1,000.) per year, such amount to be paid in addition to his regular salary.

Sec. 3. Any district judge of the State of Texas who may be assigned to sit for any one (1) of the judges of the District Courts or of the Criminal District Courts of Tarrant County, Texas, under the provisions of Chapter 156, Acts of the 40th Legislature, 1927, as amended, codified as Article 200a, Revised Civil Statutes of Texas, or Chapter 99, Acts of the 51st Legislature, 1949, as amended, codified as Article 6228b, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds, in an amount to be set by the Commissioners Court of said county not to exceed the difference between the pay of such visiting judge from all sources and the pay received from all sources by the district judges in Tarrant County, such amount to be paid by the county upon approval of the presiding judge of the Administrative Judicial District in which said court is located.

[Acts 1961, 57th Leg., p. 21, ch. 11, eff. Feb. 24, 1961; Acts 1969, 61st Leg., p. 2457, ch. 824, § 3, eff. June 16, 1969.]

**Art. 6819a-27. Additional Compensation of District Court Judge of 142nd Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Midland County is hereby authorized to pay the District Judge of the 142nd Judicial District for services rendered to Midland County and for administrative duties, a reasonable sum not to exceed Three Thousand, Six Hundred Dollars (\$3,600.) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 142nd Judicial District.  
[Acts 1961, 57th Leg., p. 24, ch. 14.]

**Art. 6819a-28. Additional Compensation of District Court Judges of 10th, 56th, 122nd and 212th Judicial Districts**

In addition to the compensation paid by the State of Texas to District Judges, the Commissioners Court of Galveston County may pay to the District Judges of the 10th Judicial District, the 56th Judicial District, the 122nd Judicial District, and the 212th Judicial District, respectively, for services rendered to Galveston County for performing administrative duties, the sum of Ten Thousand Dollars (\$10,000.00) annually to each of the Judges of said District Courts. This amount shall be paid in equal monthly installments out of the General Fund or Officers' Salary Fund of Galveston County; however, no District Judge may receive from any county fund or funds as supplemental pay to his salary from the State of Texas, a sum in excess of Ten Thousand Dollars (\$10,000.00)

per annum. The Commissioners Court of Galveston County may make proper budget provisions for the payment of the sums authorized in this Act.

[Acts 1961, 57th Leg., p. 69, ch. 41, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 107, ch. 36, § 1; Acts 1973, 63rd Leg., p. 1036, ch. 401, § 1, eff. Aug. 27, 1973.]

**Art. 6819a-29. Additional Compensation of District Court Judge of 49th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Dimmit County is hereby authorized to pay the District Judge of the 49th Judicial District, for additional services rendered to Dimmit County and for performing additional administrative duties, a reasonable sum not to exceed Twenty-four Hundred Dollars (\$2400) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation now paid or authorized to be paid the District Judge of the 49th Judicial District. [Acts 1961, 57th Leg., p. 176, ch. 93.]

**Art. 6819a-30. Additional Compensation of District Court Judge of 79th Judicial District**

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Courts of Brooks, Duval, Jim Wells and Starr Counties are hereby each authorized respectively to pay to the District Judge of the 79th Judicial District for services rendered to the County, and for performing administrative duties, the sum of One Thousand, Two Hundred Dollars (\$1,200) per annum, to be paid in twelve equal monthly installments.

Sec. 2. The compensation provided for in Section 1 shall be in addition to the compensation provided by law and paid by the State of Texas to district judges and shall be in lieu of all other compensation now paid or authorized to be paid by said counties to the District Judge of the 79th Judicial District.

[Acts 1961, 57th Leg., 1st C.S., p. 197, ch. 58.]

**Art. 6819a-31. Payments to Defray Expenses of District Court Judge of 121st Judicial District**

Sec. 1. In addition to compensation provided by law and paid by the State, the Commissioners Courts of Cochran, Hockley, Terry, and Yoakum Counties are hereby authorized to pay the District Judge of the 121st Judicial District for telephone, meals, travel, and lodging expenses incurred by him in serving the Counties of Cochran, Hockley, Terry, and Yoakum.

Sec. 2. The total amount authorized to be paid by Section 1 of this Act shall not exceed Four Thousand, Eight Hundred Dollars (\$4,800) per annum, and none of these Commissioners Courts shall pay more than One Thou-

sand, Two Hundred Dollars (\$1,200) per annum toward the total amount authorized herein.

[Acts 1963, 58th Leg., p. 13, ch. 11.]

**Art. 6819a-32. Additional Compensation of District Court Judge of 64th Judicial District**

In addition to the compensation provided by law and paid by the State, the Commissioners Court of Castro, Hale or Swisher County, or any or all of said counties, are hereby authorized to pay the District Judge of the 64th Judicial District, for services rendered to such counties and for performing administrative duties, a reasonable sum not to exceed Three Thousand Dollars (\$3,000) per annum. Such sum may be apportioned by the three (3) counties and shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 64th Judicial District. The total maximum additional compensation allowed under this Act shall be Three Thousand Dollars (\$3,000).

[Acts 1963, 58th Leg., p. 420, ch. 145, § 1.]

**Art. 6819a-33. Additional Compensation of District Court Judge of 128th Judicial District**

In addition to the compensation provided by law and paid by the state, the Commissioners Court of Orange County is hereby authorized to pay the District Judge of the 128th Judicial District, for services rendered to the county and for performing administrative duties, a reasonable sum not to exceed Six Thousand Dollars (\$6,000) per annum. Such sum shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 128th Judicial District.

[Acts 1963, 58th Leg., p. 446, ch. 159, § 1.]

**Art. 6819a-34. Additional Compensation of District Court Judges of 72nd, 99th and 140th Judicial Districts**

Sec. 1. (a) The Commissioners Court of Lubbock County shall pay to each of the Judges of the 99th and 140th Judicial Districts, for services rendered in performing administrative duties in Lubbock County, the sum of Thirty-five Hundred Dollars (\$3,500) annually. The sum provided for herein shall be paid in equal monthly installments out of the general fund or officers salary fund of Lubbock County and the Commissioners Court of Lubbock County shall make proper budget provisions therefor.

(b) The Commissioners Courts of Lubbock and Crosby Counties shall pay to the Judge of the 72nd Judicial District, for services rendered in performing administrative duties therein, the sum of Thirty-five Hundred Dollars (\$3,500) annually. The sum provided for herein shall be paid in equal monthly installments out of the general fund or officers salary fund of Lubbock and Crosby Counties as apportioned by the two (2) counties and the Com-

missioners Courts of Lubbock and Crosby Counties shall make proper budget provisions therefor.

Sec. 2. The compensation provided for in Section 1 shall be in addition to the compensation provided by law and paid by the State of Texas to District Judges and all other compensation now paid or authorized to be paid to the District Judges of the 72nd, 99th, and 140th Judicial Districts.

[Acts 1963, 58th Leg., p. 763, ch. 290.]

**Art. 6819a-35. Additional Compensation of District Court Judges of 85th and 13th Judicial Districts**

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Brazos County shall pay the district judge of the 85th Judicial District, Four Thousand Dollars (\$4,000) per annum for performing the duties of judge of the juvenile court.

Sec. 2. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Navarro County shall pay the district judge of the 13th Judicial District, Four Thousand Dollars (\$4,000) per annum for performing the duties of judge of the juvenile court.

[Acts 1963, 58th Leg., p. 916, ch. 347.]

**Art. 6819a-36. Additional Compensation of District Court Judges of 47th, 108th and 181st Judicial Districts**

Sec. 1. In addition to the compensation otherwise provided by law, the district judges of the 47th, 108th, and 181st Judicial Districts shall be paid for services rendered to the county or counties comprising each such district a sum of not less than \$3,500 per annum and may be paid not more than \$6,000 per annum. The minimum additional compensation of \$3,500 shall be paid from the funds of the county or counties comprising each of the judicial districts by the commissioners courts of the counties in the same proportion as the population in each county bears to the total population of the counties comprising such judicial district, according to the last preceding federal census. The total additional remuneration paid to any one judge of the above-listed judicial districts under the provisions of this Act shall not exceed the sum of \$6,000 per annum. The additional compensation provided for herein shall be paid in equal monthly installments.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid to the judges of the 47th, 108th, and 181st Judicial Districts.

Sec. 3. The compensation provided for in Sections 1 and 2 shall be in addition to all other compensation paid or authorized to be paid to the judges of the 47th and 108th Judicial Districts.

Sec. 4. Any District Judge of the state who may be assigned to sit for the judge of the 47th or 108th Judicial District, under the provisions of Article 200a, Revised Civil Statutes, may, while so serving, in addition to his necessary expenses, receive additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by district judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding judge in which said court is located.

[Acts 1963, 58th Leg., p. 925, ch. 355, eff. May 24, 1963; Acts 1971, 62nd Leg., p. 1292, ch. 334, § 1, eff. Aug. 30, 1971.]

**Art. 6819a-37. Additional Compensation of District Court Judges of 69th and 84th Judicial Districts**

Sec. 1. The commissioners courts of Dallam, Deaf Smith, Hartley, Moore, Oldham and Sherman counties may pay to the District Judge of the 69th Judicial District, for services rendered in performing administrative duties therein, the sum of \$3,000 annually. The sum provided for herein, if payment is approved, shall be paid by the counties composing such Judicial District in accordance with the proportion that the population of each county bears to the total population of the Judicial District, as shown by the last preceding federal census. The salary shall be paid in equal monthly installments, and may be paid out of the general fund or any other fund available for such purpose, as may be determined by the commissioners court of each county.

Sec. 2. The commissioners courts of Hansford, Hutchinson and Ochiltree counties may pay to the District Judge of the 84th Judicial District, for services rendered in performing administrative duties therein, the sum of \$3,000 annually. The sum provided for herein, if payment is approved, shall be paid by the counties comprising such Judicial District in accordance with the proportion that the population of each county bears to the total population of the Judicial District, as shown by the last preceding federal census. The salary shall be paid in equal monthly installments and may be paid out of the general fund or any other fund available for such purpose as may be determined by the commissioners court of each county.

Sec. 3. The compensation provided for in Sections 1 and 2 shall be in addition to the compensation provided by law and paid by the State of Texas to District Judges.

[Acts 1965, 59th Leg., p. 382, ch. 185, eff. May 17, 1965.]

**Art. 6819a-38. Additional Compensation for District Court Judges of 92nd, 93rd and 139th Judicial Districts**

The Commissioners Court of Hidalgo County may supplement the compensation of the Judges of the 92nd, 93rd, and 139th Judicial Districts

not to exceed \$3,000 a year, in addition to all other compensation the judges are entitled or permitted to receive from either the state or the county.

[Acts 1965, 59th Leg., p. 391, ch. 190, § 1.]

**Art. 6819a-39. Additional Compensation for District Court Judges of 58th, 60th, 136th, 172nd Judicial Districts and Criminal District Court of Jefferson County**

Sec. 1. In addition to the compensation paid by the State of Texas to the District Judges, the Commissioners Court of Jefferson County shall pay District Judges of the 58th Judicial District, the 60th Judicial District, 136th Judicial District, 172nd Judicial District, and the Criminal District Court of Jefferson County, respectively, for services rendered to Jefferson County and for performing administrative duties, an annual sum of not less than Eight Thousand Dollars (\$8,000) nor more than Ten Thousand Dollars (\$10,000) to each of said Judges, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Jefferson County. Such compensation shall be for all judicial and administrative services now rendered by such Judges, and any additional judicial and administrative services hereafter to be assigned to them, and in addition to all salaries paid or hereafter to be paid to them by the State of Texas out of state revenues.

Sec. 2. The salary of the Judge of the Court of Domestic Relations for Jefferson County shall be the same and equal to that paid, or which may hereafter be paid, to each of the aforesaid District Judges, and shall be paid by the Commissioners Court of Jefferson County out of the General Fund or Officers Salary Fund of Jefferson County in twelve (12) equal monthly installments.

Sec. 3. The salary and compensation provided by this Act for the Judges of the aforesaid District Courts, Criminal District Court and Court of Domestic Relations shall be in lieu of the salary and compensation provided for said Judges as members of the Jefferson County Juvenile Board established by Chapter 63, Acts of the 55th Legislature, Regular Session, 1957 (Article 5139P, Vernon's Texas Civil Statutes), provided, however, this Act shall not affect the salary and compensation authorized to be paid to the County Judge of Jefferson County as a member of the said Jefferson County Juvenile Board, nor shall this Act affect the existence or functions of said Board.

[Acts 1965, 59th Leg., p. 426, ch. 212, eff. May 18, 1965; Acts 1973, 63rd Leg., p. 446, ch. 196, § 1, eff. May 25, 1973.]

**Art. 6819a-40. Additional Compensation of County and District Court Judges in McLennan County**

Sec. 1. (a) The Commissioners Court of McLennan County shall supplement the salary of the District Court Judges whose jurisdiction lies in McLennan County, the Judge of the County Court at Law of McLennan County, and

the salary of the County Judge of McLennan County in an amount not less than \$1,500 nor more than \$5,000 a year for services rendered to the Juvenile Board of McLennan County.

(b) The Commissioners Court may also supplement District Judges' salary by not more than \$5,000 a year for administrative services rendered to the County.

Sec. 2. The supplemental salary described in Section 1 of this Act is in addition to all other salary now paid or authorized to be paid by the State to the Judges of the District Courts, of the County Court at Law and of the County Court of McLennan County.

[Acts 1965, 59th Leg., p. 772, ch. 363, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1785, ch. 524, § 3, eff. June 1, 1971.]

**Art. 6819a-41. Additional Compensation for District Court Judge of 137th Judicial District**

Sec. 1. The Commissioners Court of Lubbock County shall pay to the Judge of the 137th Judicial District, for services rendered in performing administrative duties in Lubbock County, the sum of Three Thousand, Five Hundred Dollars (\$3,500) annually. The sum provided for herein shall be paid in equal monthly installments out of the general fund or officers' salary fund of Lubbock County and the Commissioners Court of Lubbock County shall make proper budget provisions therefor.

Sec. 2. The compensation provided for in Section 1 shall be in addition to the compensation provided by law and paid by the State of Texas to District Judges and all other compensation now paid or authorized to be paid to the District Judge of the 137th Judicial District.

[Acts 1965, 59th Leg., p. 979, ch. 473.]

**Art. 6819a-42. Additional Compensation for Judges of the 49th and 111th Judicial Districts**

Sec. 1. In addition to the compensation now paid or authorized to be paid by law, the Judge of the 49th Judicial District of Texas and the Judge of the 111th Judicial District of Texas shall each be paid by the Commissioners Court of Webb County, Texas, the sum of \$2,000 per annum, payable in monthly installments out of the general fund, officers' salary fund, jury fund, or any fund available for that purpose, for additional judicial and administrative services, and especially additional services rendered to Webb County in the trial of all criminal and civil cases ordinarily tried by a county court at law, since Webb County has no county court at law.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation now paid or authorized to be paid to the District Judge of the 49th Judicial District and the District Judge of the 111th Judicial District.

[Acts 1969, 61st Leg., p. 2161, ch. 747, eff. Sept. 1, 1969.]

**Art. 6819a-43. Additional Compensation for Judge of the 143rd Judicial District**

In the 143rd Judicial District the district judge may receive annually, payable in monthly installments, a salary to be fixed by the commissioners court of each county, to be paid by the county out of the general or jury fund, as compensation for all judicial and administrative services now rendered by the judge, and any additional judicial or administrative services hereafter to be assigned to the judge, in addition to all salaries paid or hereafter to be paid to the judge by the State of Texas out of state revenues. The salary fixed shall be a reasonable sum for performing such duties not to exceed \$6,000 per year, apportioned by the counties of the district on the basis of population according to the last preceding federal census.

[Acts 1971, 62nd Leg., p. 1192, ch. 291, § 1, eff. May 19, 1971.]

**Art. 6819a-44. Additional Compensation for Juvenile Judges of the 23rd and 130th Judicial Districts**

The commissioners court in each county in the 23rd Judicial District and the 130th Judicial District may pay the juvenile judge a sum not to exceed \$1,500 per annum for performing the duties of judge of the juvenile court. The compensation provided for in this section shall be in addition to all other compensation paid or authorized to be paid the judge who serves as juvenile judge.

[Acts 1973, 63rd Leg., p. 786, ch. 349, § 1, eff. June 12, 1973.]

**Art. 6819b. Salaries of Court Officers**

The salaries of the District Attorneys of the State of Texas, the State's Attorney before the Court of Criminal Appeals, the clerks of the Supreme Court, Court of Criminal Appeals and Court of Civil Appeals and the salaries of the other officers and employes of the Supreme Court of the State of Texas, the Court of Criminal Appeals and the Court of Civil Appeals, shall be as fixed hereinafter in this Act<sup>1</sup> and as shall be determined by the Legislature in its various appropriation Acts for the support of the Judiciary of this State.

[Acts 1935, 44th Leg., p. 908, ch. 355, § 2.]

<sup>1</sup> Articles 6819a to 6819d.

**Art. 6819c. Expenditures for Law Books for Courts of Civil Appeals**

All amounts appropriated in this Act<sup>1</sup> for law books, or expended therefor under authority of this Act, shall be paid out of the special accounts in the General Revenue Fund provided for in Section 6<sup>2</sup> hereof. Annual expenditures for law books shall not however, exceed the respective itemized amounts appropriated for each of said courts.

[Acts 1935, 44th Leg., p. 908, ch. 355, § 4.]

<sup>1</sup> Articles 6819a to 6819d.

<sup>2</sup> Article 6819d.

**Art. 6819d. Fees Deposited in General Revenue Fund**

All fees paid to any court for which appropriations are made herein or to any of the clerks, officers or employes of any such court, whether such fees are for official or unofficial copies of opinions, or for other services or documents, shall be deposited at the close of each month in the General Revenue Fund of the State Treasury and shall be carried as a special account in said Fund for the court depositing same, and none of such fees shall be retained by or paid to said clerks, officers or employes. Each court employe whose salary is provided for herein, except porters, shall file with the Comptroller at the end of each month an affidavit showing that he has not retained any compensation out of any court fees or other fees received by him or the court during that month and showing that all such fees have been deposited in the State Treasury. The Comptroller shall not issue a warrant in payment of the salary of any such employe for any month unless and until the affidavit required herein has been filed for that month.

[Acts 1935, 44th Leg., p. 908, ch. 355, § 6.]

**Art. 6819e. Repealed by Acts 1947, 50th Leg., p. 54, ch. 42, § 2**

**Art. 6820. Judicial District Expenses**

All district judges and district attorneys when engaged in the discharge of their official duties in any county in this state other than the county of their residence, shall be allowed their traveling and other necessary expenses, as provided by the Travel Regulations Act of 1959, while actually engaged in the discharge of such duties. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the state upon the sworn and itemized account of each district judge or attorney entitled thereto, showing such expenses.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 903, ch. 484, § 1; Acts 1955, 54th Leg., p. 1099, ch. 407, § 1; Acts 1967, 60th Leg., p. 1934, ch. 724, § 2, eff. Sept. 1, 1967.]

**Art. 6821. Special Judges**

The salaries of special judges commissioned by the Governor in obedience to Section 11, Article 5, of the Constitution, or elected by the practicing lawyers or agreed upon by the parties as provided by law, shall be determined and paid as follows:

1. Each special judge shall receive the same pay as district judges for every day that he may be occupied in performing the duties of judge, and those commissioned by the Governor shall also receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court.

2. The amount of such salary shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by the special judge.

3. A judge so commissioned shall, in order to obtain his salary, present his sworn account to the Comptroller, showing the number of days necessarily occupied in going to and returning from such place, accompanied by evidence that he was duly commissioned. Such account shall be certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed.

4. A judge so elected or agreed upon shall be paid for his services on presentation to the Comptroller of the certificate of the clerk of the court in which such services were performed, showing the record of such election or appointment and services, and accompanied by the sworn account of such judge showing the number of days actually served by him as such special judge.

[Acts 1925, S.B. 84.]

#### Art. 6822. Salaries of Employés

Any deputy, assistant clerk or any employé authorized by the laws of this State to be appointed by the head of any department of the State Government, shall, when his salary is not fixed or provided for by law, receive such salary as the Legislature shall from time to time appropriate.

[Acts 1925, S.B. 84.]

#### Art. 6822a. State Employees Injured or Killed in Performance of Governmental Functions or While Exposed to Unavoidable Dangers; Payment of Expenses

Sec. 1. The Legislature is hereby authorized to appropriate public funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses of state employees injured or killed while engaged in performance of a necessary governmental function assigned to the employee, or where the duties of such employee require the employee to expose himself to unavoidable dangers peculiar to the performance of a necessary governmental function.

Sec. 2. Agencies of the state are hereby authorized to expend appropriated funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses to those state employees under their jurisdiction and control only when such employees are engaged in the activities described in Section 1 of this Act, and only to the extent authorized by appropriations made by the Legislature.

Sec. 3. The payment of the expenses provided for in Section 1 of this Act is authorized to be made in addition to other prerequisites of employment now authorized by law.

[Acts 1959, 56th Leg., p. 838, ch. 377.]

5 West's Tex. Stats. & Codes—56

Art. 6823. Repealed by Acts 1967, 60th Leg., p. 1934, ch. 724, § 3, eff. Sept. 1, 1967

#### Art. 6823a. Travel Regulations Act of 1959

##### Short Title

Sec. 1. This Act is the "Travel Regulations Act of 1959."

##### Application of Act

Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, and state employees. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education.

##### Basis of Reimbursement; Per Diem Allowance; Rate; Computation

Sec. 3. a. Reimbursement from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

b. The rate of per diem and transportation allowance and method of computing those rates shall be those set forth in General Appropriation Acts providing for the expenses of the state government from year to year.

##### Acceptance of Money From Corporation or Person Under Examination; Violation

Sec. 4. Unless otherwise provided by law, officers and employees traveling to the performance of their official duties shall not accept any sums of money for wages or expenses, from any corporation, firm, or person who may be or is being audited, examined, inspected or investigated, and must receive their traveling expenses from the amounts appropriated in the Appropriation Acts. The Comptroller is hereby prohibited from paying the salary of any employee of the state who violates these provisions.

##### Advanced Approval of Governor; Travel Outside United States

Sec. 5. Any travel connected with official business of the state for which reimbursement for travel expenses incurred is claimed, with the exception of travel to, in, and from the several states, United States possessions, Mexico, and Canada, must have the advance written approval of the Governor. Blanket authority by

the Governor may be given the Department of Public Safety to law enforcement personnel.

Rules and Regulations; Standard Expense Account Forms; Reimbursement for Travel by Private Conveyance; Overpayment

Sec. 6. a. The Comptroller of Public Accounts is to promulgate rules and regulations to facilitate the execution of the travel regulations, as defined in this Act or as may hereafter be contained in General Appropriations Acts, and shall, with the concurrence of the State Auditor, prescribe the form on which travel expenses are to be submitted. The Comptroller shall approve claims for travel expense and issue warrants on basis of approved claims.

Such rules and regulations as are prescribed by the Comptroller shall be subject to final approval by the Attorney General. After such approval has been given, official copies of the rules and regulations, including administrative policies and/or interpretations of these rules and regulations, shall be filed with the Secretary of State.

b. Standard expense account forms shall be used by all state agencies in preparing the expense accounts for traveling state employees. Such forms shall contain information stating

(1) the point of origin and the town, place or point of destination of each trip and the reimbursable mileage travelled between each point, town, or place. This provision shall also apply to intra-city mileage;

(2) the actual period of time the employee is away from his designated headquarters entitling him to travel expenses; and

(3) a brief statement which clearly shows the purpose of the trip and the character of official business performed.

c. In determining transportation reimbursement for travel by private conveyance, the Comptroller shall base reimbursement on the mileage by shortest highway distance between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In determining the amounts of reimbursement for transportation by personal car within the State, the Comptroller shall compute all distances according to the shortest route between points. In determining the amount of reimbursement for transportation by personal car within this state, the Comptroller shall adopt a mileage guide including a chart of distances showing the shortest route between points, and which shall include all Farm-to-Market roads and shall be reissued annually.

d. When two or more employees travel in a single private conveyance, only one shall receive a transportation allowance, but this provision shall not preclude each traveler from receiving a per diem allowance.

e. When two, three, or four officials or employees of the same state agency with the same itinerary on the same dates are required to travel on the same official state business for which travel reimbursement for mileage in a personal car is claimed, mileage reimbursement will be claimed and allowed for only one of the employees except as provided hereafter. To the extent of mileage reimbursement claimed, the Comptroller shall consider such travel claims as multiple claims and may pay only one such claim. If more than four employees attend such meeting or conference in more than one car, full mileage reimbursement shall be allowed for one car for each four employees and for any fraction in excess of a multiple of four employees. If, in any instance, it is not feasible for these officials or employees to travel in the same car, then prior official approval from the head of the state department or agency shall be obtained and shall be considered as authorization and the basis for reimbursement for travel for each person authorized to use his personal car in such travel.

f. Should an officer or employee of the state receive an overpayment for travel expenses from money appropriated in the Appropriations Acts, he is to reimburse the state for such overpayment.

Double Travel Expense Payments; Reimbursement by Non-State Agency

Sec. 7. Double travel expense payments to state officials or employees are prohibited. When an employee engages in travel for which he is to be compensated by a non-state agency, he shall not receive any reimbursement for such travel from authorized amounts in the General Appropriation Acts.

Local Transportation Allowance; Limits

Sec. 8. An employee whose duties customarily require travel within his designated headquarters may be authorized a local transportation allowance for this travel. Such allowance, however, shall never exceed the transportation allowance for use of a privately owned automobile as set by the Legislature in the General Appropriations Acts.

Disallowance of Per Diem Reimbursement

Sec. 9. Neither a per diem allowance nor partial per diem allowance as set out in the General Appropriations Acts shall be allowed for the period of time on those days when an employee is:

(1) At his official designated headquarters.

(2) Absent from post of duty for personal reasons.

(3) Absent from post of duty for any reason not connected with duties of the agency by which the employee is employed.

(4) Away from designated headquarters for a period of less than six consecutive hours.

When an employee leaves his post of duty for any reason not connected with the duties of the agency by which such employee is employed, or for personal reasons, the employee shall clearly show he is absent for personal reasons on the expense account and will also show the hour and date of departure from post of duty and the hour and date he returned to said post of duty.

**Public Conveyances; Courtesy Cards**

Sec. 10. The provisions of this Act shall not preclude reimbursement of claims by officials or employees for use of public conveyances. Transportation is authorized by courtesy cards for air, rail and bus lines.

**Exclusions**

Sec. 11. None of the provisions of this Act shall apply to reimbursement for travel expenses incurred by officials or employees of athletic departments of the institutions of higher education, to reimbursement for travel expenses to officials or employees of institutions of higher education from gifts or bequests, or to reimbursement for travel expenses of officials or employees when expenses for such travel are paid or reimbursed to the institutions of higher education under provisions of contracts between the institutions and the Federal Government or other contracting agencies. The governing boards of the respective institutions of higher education shall make such necessary rules and regulations as may be deemed advisable for the administration and control of such travel.

[Acts 1959, 56th Leg., p. 523, ch. 231; Acts 1963, 58th Leg., p. 1171, c. 457, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1111, ch. 492, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1934, ch. 724, § 1; Acts 1967, 60th Leg., p. 2053, ch. 758, § 1, eff. Aug. 28, 1967.]

**Art. 6824. Change in Salary**

The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto, provided, however, that the members of the Legislature by majority vote may at any time set their salaries at any amount within the Constitutional limit.

[Acts 1931, 42nd Leg., p. 9, ch. 7, § 1.]

**Art. 6825. Salary of Women**

All women performing public service for this State shall be paid the same compensation for their service as is paid to men performing the same kind, grade and quantity of service, and there shall be no distinction in compensation on account of sex.

[Acts 1925, S.B. 84.]

**Art. 6826. How Paid**

Annual salaries provided for in this title shall be paid monthly on warrants drawn by the Comptroller on the Treasurer.

[Acts 1925, S.B. 84.]

**Art. 6826a. Expired**

This article, derived from Acts 1943, 48th Leg., p. 3, ch. 3, § 1, authorized compliance with the Federal Victory Income Tax, to be in force and effect only so long as the United States was at war with Germany, Japan or Italy.

**Art. 6827. Evidence of Qualification**

Upon demand of any citizen of this State, the Comptroller, Treasurer, commissioners courts, county treasurers and all other officers of this State or of any municipal division thereof, who are authorized or required by law to audit, pay or order to be paid, claims due from the State, or any county or municipal division thereof, to any person as salary, fees, compensation, perquisites or emoluments for official services rendered by such person as an officer thereof, before auditing, paying or ordering payment of such claim, shall require such claimant to produce the certificate of his election or appointment to such office directed by the laws of this State to be issued to such officer, or if his claim be founded upon the judgment or decree of a court of this State authorized by law to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof.

[Acts 1925, S.B. 84.]

**Art. 6828. Unauthorized Officers**

It shall be unlawful for any officer or court of this State, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments or services, as an officer of the State or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this State, and whose election has been ascertained and certified or declared in the manner required by law, or who has been appointed such officer by the lawful appointing power under the Constitution and laws of this State, or who has been adjudged entitled thereto by a State court of competent jurisdiction, and has qualified as such officer in accordance with law. Any person not so elected, appointed and qualified shall not be entitled to receive pay for services as such officer, or to exercise the powers or jurisdiction of such officer. The official acts of any person claiming a right to exercise such power or jurisdiction contrary to the provisions of this law shall be void.

[Acts 1925, S.B. 84.]

**Art. 6829. Other Salaries**

The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found elsewhere in the statutes, or in any appropriation bill permitting or authorizing the existence, or prescribing the compensation of other officers.

[Acts 1925, S.B. 84.]

**Art. 6829a. Waiver of Pay by State or District Officers While on Military Duty**

Sec. 1. Any person holding a State or District office in the State of Texas, whether as a member of the executive, legislative or judicial departments, when called into the military service of either the State or National Governments, is hereby authorized to file with the Comptroller of Public Accounts of the State, a statement or certificate in writing, to the effect that he waives the payment of his salary or pay or the emoluments of his said office during the period of his military service and authorizing the payment of such salary, pay or emoluments of his office to any other person, who, under the provisions of any law of this State is appointed or elected to temporarily fill such civil office during the absence of such officer, such waiver or assignment to terminate

immediately upon the release or discharge of said officer from such military service.

Sec. 2. Such waiver or assignment shall be sufficient authority for the Comptroller of Public Accounts of the State of Texas to issue State warrants and to pay such person so-holding such officer's position during his absence in military service out of appropriations made by the Legislature for such office.

Sec. 3. The filing with the Comptroller of Public Accounts of the State of Texas of such waiver or assignment provided for in this Act shall never be construed by any Court of this State to be a resignation from his office by the person entering the military service of the State or National Governments or that his office is vacant by reason thereof.

[Acts 1943, 48th Leg., p. 693, ch. 384.]

# TITLE 118

## SEAWALLS

### Article

- 6830. Commissioners' Court May Construct Levees.
- 6831. May Use Streets and Alleys.
- 6832. Eminent Domain.
- 6833. Bonds: Election.
- 6834. Election: Commissioners' Court to Secure List of Voters.
- 6835. Result of Election.
- 6836. Sinking Fund.
- 6837. Cession of State Lands.
- 6838. Custodians of Funds.
- 6839. General Laws to Govern.
- 6839a. Grant of Seawall Right of Way.
- 6839b. Validating Seawall Bonds.
- 6839c. Validating Bond Authorization for Seawall Construction.
- 6839d. Validation of County or Municipal Sea wall Bonds.
- 6839e. Validation of Bonds and Proceedings for Renewal or Refunding.
- 6839f. Cooperation and Contracts With United States or Agencies Thereof.
- 6839g. Commissioners' Courts Authorized to Construct Breakwaters; Certain Gulf Counties Excepted.

### Art. 6830. Commissioners' Court May Construct Levees

The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized from time to time to establish, locate, erect, construct, extend, protect, strengthen, maintain, and keep in repair and otherwise improve any sea wall or breakwater, levees, dikes, floodways and drainways, and to improve, maintain and beautify any boulevard erected in connection with such sea wall or breakwater, levees, dikes, floodways and drainways, and to incur indebtedness therefor, the payment of which may be provided for either with or without the issuance of bonds. And said commissioners' courts and municipal authorities shall also have power and are hereby authorized to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment of said indebtedness, provided that when the taxes are levied as herein provided for, will not pay off said indebtedness within five years, then the payment of said indebtedness shall be provided for by the issuance of bonds as hereinafter provided. [Acts 1925, S.B. 84.]

### Art. 6831. May Use Streets and Alleys

Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls, breakwaters, levees, dikes, floodways and drainways, and to license, regulate or grant such additional uses of said sea-

walls, breakwaters, levees, dikes, floodways or drainways as will not impair their efficiency. [Acts 1925, S.B. 84.]

### Art. 6832. Eminent Domain

Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls, breakwaters, levees, dikes, floodways and drainways, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this Act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, of the city council, define and describe lands needed, and determine whether an easement or fee simple estate in said land shall be taken.

[Acts 1925, S.B. 84.]

### Art. 6833. Bonds: Election

Before issuing said bonds the commissioners court or governing body shall prescribe the amount to be issued, the rate of interest thereon, and provide for an election to vote for or against the proposed taxation.

[Acts 1925, S.B. 84.]

### Art. 6834. Election: Commissioners' Court to Secure List of Voters

For the purpose of ascertaining whether two-thirds majority of the qualified voters voting thereon who are resident property taxpayers in said county or city have voted in favor of said proposed taxation, the Commissioners Court or governing body shall secure from the Tax Collector of the county a list of all the qualified voters in said county or city, as the case may be, and in addition to any other notice required by law, the Commissioners Court or governing body shall mail to each qualified voter therein a copy of such proposition as submitted at least ten (10) days before the date of such election. Before any bonds shall be issued hereunder, the proposition to levy a

tax to pay the interest and sinking fund on such bonds shall be submitted to the qualified voters who are property taxpayers of such county or city; said election to be held and said bonds issued and sold as provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925. The ballots in said election shall contain the words in substance: "In Favor of the Proposed Tax," or "Against the Proposed Tax."

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 73, ch. 35; Acts 1930, 41st Leg., 5th C.S., p. 160, ch. 28; Acts 1933, 43rd Leg., p. 375, ch. 146.]

#### Art. 6835. Result of Election

The Commissioners Court or governing body, as soon as practicable after said election, shall meet and canvass the returns thereof and ascertain and record in the Minutes the result as shown by said returns. If said Commissioners Court or governing body shall find that due notice of said election and submission of said question has been made to all of the qualified voters who are taxpayers in said county or city as herein provided and that in said election two-thirds majority of the qualified voters who are resident property taxpayers voting thereon in said election voted in favor of the said tax, such Commissioners Court or governing body shall find that two-thirds majority of the qualified voters who are resident property taxpayers of said county or city voting thereon in said election, voted in favor of the tax and thereupon said Commissioners Court or governing body shall be authorized to issue the bonds and levy the tax for the purposes provided in this Title.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 73, ch. 35; Acts 1933, 43rd Leg., p. 375, ch. 146.]

#### Art. 6836. Sinking Fund

Whenever bonds are issued under this title, the commissioners court, or governing body, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds. All taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in the bonds of the State of Texas, or of the United States.

[Acts 1925, S.B. 84.]

#### Art. 6837. Cession of State Lands

The right to the use and control for the purposes prescribed by this title, of so much of the land and sea bottom below high tide as may be deemed necessary by said commissioners court or governing body, is hereby ceded by the

State of Texas to counties and cities availing themselves of the provisions herein.

[Acts 1925, S.B. 84.]

#### Art. 6838. Custodians of Funds

All funds, revenues and moneys derived from the sale of the bonds herein authorized shall be deposited with the County or City Treasurer, as the case may be, and shall be held in trust exclusively for the purposes named in this Title. All moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of principal and interest of bonds to be issued under this Title.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 73, ch. 35, § 3.]

#### Art. 6839. General Laws to Govern

All bonds issued hereunder shall be issued under and subject to the provisions of the laws regulating bonds issued by cities and counties, in so far as said laws do not conflict with the provisions of this title. The provisions of this title shall apply to all cities bordering on the coast of the Gulf of Mexico, whether incorporated by general or special laws.

[Acts 1925, S.B. 84.]

#### Art. 6839a. Grant of Seawall Right of Way

Any county may donate and grant to the State of Texas or to any eleemosynary institution incorporated under the laws of the State of Texas and operated without profit, but for the benefit of the public, such portions of any seawall right of way as may have been heretofore acquired by such county, and by the Commissioners' Court of such county deemed proper to be so granted, and upon any such Commissioners' Court so determining, the county judge of such county may convey such property in accordance with the order of said Commissioners' Court.

[Acts 1929, 41st Leg., p. 308, ch. 144, § 1.]

#### Art. 6839b. Validating Seawall Bonds

Sec. 1. Wherever the Commissioners' Court of any County, or the Governing Body of any City, District or political subdivision of this State has ordered an election for the issuance of Seawall Bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property tax paying voters of such County, City, District, or Political Subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners Court of such County, or the Governing Body of such City, District or Political Subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the qualified property tax paying voters, voting at such election, and, thereupon, by proper order, ordinance or resolution, has authorized the issuance of bonds for the construction of such Seawalls and levied an ad va-

lorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all acts and proceedings had and taken in connection therewith by such Commissioners' Court, or the Governing Body of any City, District or Political Subdivision in this State, the levy of taxes and the provision made for the payment of the interest and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated; and such bonds so authorized are hereby validated and constituted the legal obligations of such County, City, District or Political Subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners' Court, or the Governing Body of any such City, District or Political Subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenues in the time and manner prescribed by statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in Counties and Cities bordering on the Coast of the Gulf of Mexico, and hereby finds that the manner in which any such County, City, District, or Political Subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized.

[Acts 1930, 41st Leg., 5th C.S., p. 119, ch. 6.]

#### Art. 6839c. Validating Bond Authorization for Seawall Construction

Sec. 1. Wherever the Commissioners' Court of any county, or the governing body of any city, district, or political subdivision of this State has ordered an election for the issuance of Seawall Bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property tax paying voters of such county, city, district, or political subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners' Court of such county, or the governing body of such city, district, or political subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance, or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the qualified property tax paying voters, voting at such election, and thereupon, by proper order, ordinance, or resolution, has authorized the issuance of bonds for the construction of such seawalls and levied an ad va-

lorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all acts and proceedings had and taken in connection therewith by such Commissioners' Court, or the governing body of any city, district, or political subdivision in this State, the levy of taxes and the provision made for the payment of the interest and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated and such bonds so authorized are hereby validated and constituted the legal obligations of such county, city, district, or political subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners' Court, or the governing body of any such city, district, or political subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenue in the time and manner prescribed by Statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in counties and cities bordering on the Coast of the Gulf of Mexico, and hereby finds that the manner in which any such county, city, district, or political subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized.

[Acts 1931, 42nd Leg., 1st C.S., p. 82, ch. 38.]

#### Art. 6839d. Validation of County or Municipal Sea wall Bonds

Sec. 1. Wherever the Commissioners Court of any county, or the governing body of any city, district or political subdivision of this State has ordered an election for the issuance of sea wall bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property taxpaying voters of such county, city, district, or political subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners Court of such county, or the governing body of such city, district or political subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the property taxpaying voters, voting at such election, and, thereupon, by proper order, ordinance or resolution, has authorized the issuance of bonds for the construction of such sea walls and levied an ad valorem tax

to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all Acts and proceedings had and taken in connection therewith by such Commissioners Court or the governing body of any city, district, or political subdivision in this State, the levy of taxes and the provision made for the payment of the interest, and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated; and such bonds so authorized are hereby validated and constituted the legal obligations of such county, city, district or political subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners Court, or the governing body of any such city, district or political subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenues in the time and manner prescribed by Statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in counties and cities bordering on the coast of the Gulf of Mexico, and hereby finds that the manner in which any such county, city, district or political subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized.

[Acts 1933, 43rd Leg., p. 173, ch. 80.]

**Art. 6839e. Validation of Bonds and Proceedings for Renewal or Refunding**

Sec. 1. Any and all bonds of any county or city bordering on the coast of the Gulf of Mexico heretofore issued to construct a seawall and breakwater under Title 118 of the Texas Civil Statutes or any special or local Act of the Legislature, and all renewals and refundings thereof issued before the effective date of this Act, whether of the whole or part of the bonds outstanding of a single or of two or more issues, which bonds or renewals or refundings were originally acquired from the issuer by the United States government or any of its agencies, are validated and declared to be negotiable instruments, despite any irregularity or lack of statutory authority in their authorization, issuance or delivery.

Sec. 2. Any and all proceedings had before the effective date of this Act for renewal or refunding of any of such bonds, including without limitation provisions for their security and payment, and the pledging of operating revenues therefor, are validated, and the refunding bonds are declared to be, when issued, valid

negotiable instruments, despite any irregularity of such proceedings or lack of statutory authority therefor.

Sec. 3. Any and all such bonds and all renewals and refundings thereof, whether issued before or after the effective date of this Act, may be renewed or refunded from time to time in accordance with the laws applicable to the issuance of seawall bonds.

Sec. 4. This Act shall not have the effect of validating any securities the validity of which is being attacked directly in litigation instituted prior to and pending at the time this Act becomes effective.

Sec. 5. The invalidity of any provision of this Act under any circumstances shall not affect the validity of such provision under any other circumstance nor the validity of any other provision.

[Acts 1949, 51st Leg., p. 218, ch. 121.]

**Art. 6839f. Cooperation and Contracts With United States or Agencies Thereof**

Sec. 1. In addition to the powers heretofore granted by law, the county commissioners courts of all counties and the municipal authorities of all cities, bordering on the Coast of the Gulf of Mexico, shall have the power and are authorized to cooperate with and contract with the United States of America or with any agency thereof, for grants, loans or advancements to carry out any of the powers or to further any of the purposes set forth in Title 118 of the Revised Civil Statutes of Texas and to receive and use said moneys for such purposes; or to contribute and pay over to the United States of America or any of its agencies all or any part of the proceeds of sale of any bonds, issued and sold by said counties or cities under said Title 118, in connection with any project undertaken by the Federal Government affecting or relating to the construction or maintenance of such sea wall, boulevard, and other projects authorized under said Title 118.

Sec. 2. It is the purpose and intent of this Act to confer upon counties and municipal authorities of all cities bordering on the Coast of the Gulf of Mexico interested in sea-wall projects and other projects enumerated in said Title 118, when approved by the Government of the United States by Act of Congress, the fullest possible power of contract with regard to such projects of common interest.

Sec. 3. If any section, word, phrase, clause, or sentence in this Act shall be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby.

[Acts 1951, 52nd Leg., p. 131, ch. 80.]

**Art. 6839g. Commissioners' Courts Authorized to Construct Breakwaters; Certain Gulf Counties Excepted**

Authority; Excepted Counties; Payment

Sec. 1. The Commissioners Court of any county bordering on the coast of the Gulf of

Mexico, except Nueces, Kleberg, Kenedy, Jefferson, Orange, and Willacy Counties, is hereby authorized to construct breakwaters. Payment for the same shall be made from the Constitutional Permanent Improvement Fund.

**Bonds; Time Warrants; Certificates of Indebtedness;  
Taxation**

Sec. 2. To pay for the improvements authorized by Section 1, the Commissioners Court is hereby authorized from time to time to issue negotiable bonds, time warrants, and certificates of indebtedness of the county and to levy and collect taxes in payment therefor.

**Issuance of Bonds; Levy of Taxes**

Sec. 3. Bonds shall be issued and taxes shall be levied and collected in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, governing the issuance of bonds by cities, towns, and/or counties in this State. Time warrants shall be issued and taxes shall be levied and collected in accordance with the provisions of Chapter 163, Acts, Forty-second Legislature, 1931, as amended (Bond and Warrant Law of 1931).<sup>1</sup> Certificates of indebtedness shall be authorized by order of the Commissioners Court; shall mature in not to exceed thirty-five (35) years from their date or dates; shall bear interest at a rate not to exceed five per cent (5%) per annum, which interest may be evidenced by coupons; shall be signed by the County Judge and attested by the County Clerk, provided that the interest coupons may be executed by the facsimile signatures of said officers; and shall be sold for not less than par value plus accrued interest. When said certificates are issued, it shall be the duty of

the Commissioners Court to levy and have assessed and collected a tax sufficient to pay the principal of and interest on the certificates as the same become due. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if they have been issued in accordance with the Constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of Texas, and after said certificates have been so approved and registered and delivered to the purchasers, they shall be incontestable. Said certificates shall be fully negotiable and are hereby declared to be negotiable instruments under the laws of Texas.

<sup>1</sup> Article 2368a.

**Refunding Bonds**

Sec. 4. Said Commissioners Court shall have the right at all times to issue refunding bonds for the refunding of bonds and certificates issued under the terms of this Act, subject to the general laws applicable to the issuance of refunding bonds by counties and without the necessity of any notice or right to referendum vote. Said Commissioners Court shall also have the right to refund into bonds time warrants issued under the terms of this Act, subject to the provisions of the Bond and Warrant Law of 1931, as amended.<sup>1</sup>

<sup>1</sup> Article 2368a.

**Cumulative of Other Laws**

Sec. 5. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof.

[Acts 1955, 54th Leg., p. 820, ch. 304.]

# TITLE 119

## SEQUESTRATION

### Article

6840. When to be Issued.  
6841 to 6843. Repealed.  
6844. On Claim Not Due.  
6845. Repealed.  
6846. Duty of Officer.  
6847. Compensation of Officer.  
6848. Officer Expending Money.  
6849 to 6857. Repealed.  
6858. Defendant Need Not Account for Hire, etc.  
6859 to 6864. Repealed.

### Art. 6840. When to be Issued

Judges and clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenues produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.
2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.
3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.
4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.
5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.
6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath

that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property and makes oath that the defendant or either of them in the event there be more than one defendant, is a non-resident of this State.

[Acts 1925, S.B. 84.]

Arts. 6841 to 6843. Repealed by Rules of Civil Procedure, Acts 1939, 46th Leg., p. 201, § 1

### Art. 6844. On Claim Not Due

When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required by law, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued. The same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until such right shall have accrued.

[Acts 1925, S.B. 84.]

Art. 6845. Repealed by Rules of Civil Procedure, Acts 1939, 46th Leg., p. 201, § 1

### Art. 6846. Duty of Officer

The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property.

[Acts 1925, S.B. 84.]

### Art. 6847. Compensation of Officer

The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case.

[Acts 1925, S.B. 84.]

**Art. 6848. Officer Expending Money**

If the officer be compelled to expend any sum in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney.

[Acts 1925, S.B. 84.]

**Arts. 6849 to 6857. Repealed by Rules of Civil Procedure, Acts 1939, 46th Leg., p. 201, § 1**

**Art. 6858. Defendant Need Not Account for Hire, etc.**

In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property.

[Acts 1925, S.B. 84.]

**Arts. 6859 to 6864. Repealed by Rules of Civil Procedure, Acts 1939, 46th Leg., p. 201, § 1**

## TITLE 120

### SHERIFFS AND CONSTABLES

#### 1. SHERIFFS

##### Article

- 6865. Election and Term.
- 6866. Oath and Bond.
- 6867. Neglect to Qualify.
- 6868. Failure to Give New Bond.
- 6869. May Appoint Deputies, etc.
- 6869.1 Reserve Deputy Sheriffs and Constables.
- 6869a. Appointment and Number of Deputies in Certain Counties.
- 6869a. May Appoint Additional Deputies.
- 6869b. Appointment of Deputies in Counties of Less Than 20,000 Population and Property Valuation of Over \$100,000,000.
- 6869c. Number of Deputies in Counties of 197,000 or Over.
- 6869d. County Police Force in Counties of 210,000 or More.
- 6869e-1. Counties of 500,000 or More; "Night Chief Deputy," Appointment and Salary of.
- 6869f. Deputies, Including Bailiffs and Jailors, in Certain Counties of 27,000 to 30,000 and 36,000 to 37,500.
- 6870. Responsible for Their Acts.
- 6871. May Employ Guards.
- 6871a. Violation of Act; Penalty.
- 6872. Control of Courthouse.
- 6873. Shall Execute Process.
- 6874. Legislative Process.
- 6875. Repealed.
- 6876. Repealed.
- 6877. Unfinished Business.
- 6877-1. Transportation of Sheriffs and Deputies; Allowance for Expenses.
- 6877-2. Automobile Allowance to Sheriffs and Deputies in Counties of 350,000 Inhabitants.
- 6877-3. Duty Hours of Peace Officers in Counties of 100,000 to 120,000.
- 6877-4. Petty Cash Fund for Sheriff's Department in Counties Over 1,000,000.

#### 2. CONSTABLES

- 6878. Election and Term.
- 6879. Appointment of Deputies.
- 6879a. Deputy Constables in Justice Precincts Having City or Town of Certain Population; Appointment.
- 6879b. Responsible for Deputies' Acts.
- 6880. Unorganized Counties.
- 6881. Bond and Oath.
- 6882. De Facto Constable.
- 6883. Neglect to Qualify.
- 6884. Failure to Give New Bond.
- 6885. Duties in General.
- 6886. May Summon Posse.
- 6887. Failure to Execute or Return Process.
- 6888. Failure to Pay.
- 6889. Jurisdiction.
- 6889a. Automobile Expense; Allowance to Constables in Certain Precincts in Counties Over 500,000.
- 6889b. Automobile Allowance in Counties of 220,000 to 350,000.
- 6889c. Repealed.
- 6889d. Transportation or Automobile Allowance; All Counties.
- 6889e. Counties Over 600,000; Two-Way Car Radios.

#### 1. SHERIFFS

##### Art. 6865. Election and Term

The qualified voters of each county at each general election shall elect one sheriff for a term of two years.

[Acts 1925, S.B. 84.]

##### Increase in Term of Office

*Const. art. 5, § 23 was amended in November 1954 to increase the term of office of sheriffs from two to four years.*

##### Art. 6866. Oath and Bond

Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the Commissioners' Court of his county, for such sum as may be directed by such Court, not less than Five Thousand (\$5,000.00) Dollars nor more than Thirty Thousand (\$30,000.00) Dollars payable to the Governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by Law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the State or any county, and that he will well and truly execute and make due return of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precepts, to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by Law, and further conditioned that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and said sheriff shall also take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. When any person elected or appointed sheriff, in accordance with this Article, shall have given bond and taken the official oath, he may enter at once upon the discharge of his duties, and his acts shall be as valid in Law before receiving his commission as afterwards; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered; provided, however, that no sheriff or his duly and legally appointed deputies shall be responsible on their official bond or personally by reason of having received from or confined any prisoner deliv-

ered or surrendered to them by any State Ranger.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 430, ch. 260, § 1.]

#### Art. 6867. Neglect to Qualify

When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant.

[Acts 1925, S.B. 84.]

#### Art. 6868. Failure to Give New Bond

Whenever any of the sureties of a sheriff shall die, remove permanently from the State, become insolvent, or be released from liability in accordance with law, or whenever the commissioners court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers.

[Acts 1925, S.B. 84.]

#### Art. 6869. May Appoint Deputies, etc.

Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the County Clerk and deposited in said office. The number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the Justice precinct in which is located the county site of such county, and one in each Justice precinct, and a list of these appointments shall be posted up in a conspicuous place in the Clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. Provided further, that if in the opinion of the Commissioners' Court fees of the sheriff's office are not sufficient to justify the payment of salaries of such deputies, the Commissioners' Court shall have the power to pay the same out of the General Fund of said county.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., 1st C.S., p. 283, ch. 113, § 1.]

#### Art. 6869.1 Reserve Deputy Sheriffs and Constables

Sec. 1. (a) The Commissioners Court of any county in the State may authorize the sheriff of the county to appoint reserve deputy sheriffs, or any constable of the county to appoint reserve deputy constables, who shall be subject to serve as peace officers during the actual discharge of their official duties upon call of the sheriff, in the case of deputy sheriffs, or of the constable, in the case of deputy constables.

(b) The Commissioners Court may limit the number of reserve deputy sheriffs or reserve deputy constables who may be appointed.

(c) Such reserve deputy sheriffs shall serve at the discretion of the sheriff and may be called into service at any time the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law; and such reserve deputy constables shall serve at the discretion of the constable and may be called into service at any time the constable considers it necessary to have additional officers to preserve the peace and enforce the law.

(d) Such reserve deputy sheriffs and deputy constables shall serve without pay but the Commissioners Court may provide compensation for the purchase of uniforms and/or equipment used by such individuals.

(e) Such reserve deputy sheriffs and deputy constables, prior to their entry upon duty and simultaneously with their appointments, shall file an oath and bond in the amount of Two Thousand Dollars (\$2,000), payable to the sheriff, in the case of reserve deputy sheriffs, and payable to the constable, in the case of reserve deputy constables, and filed with the county clerk of the county in which said appointment is made.

(f) Such reserve deputy sheriffs, while on active duty at the call of the sheriff and while actively engaged in their assigned duties; and reserve deputy constables, while on active duty at the call of the constable and while actively engaged in their assigned duties, shall be vested with the same rights, privileges, obligations and duties of any other peace officer of the State of Texas.

Sec. 2. The county and/or the sheriff or constable shall not incur any liability by reason of the appointment of any such reserve deputy sheriff or deputy constable who incurs any personal injury while serving in such capacity.

[Acts 1971, 62nd Leg., p. 1738, ch. 506, §§ 1, 2, eff. Aug. 30, 1971.]

#### Art. 6869a. Appointment and Number of Deputies in Certain Counties

[Text as added by Acts 1931, 42nd Leg., p. 809, ch. 332, § 1]

Provided that in any county having a population of more than one hundred and thirty thousand (130,000) and less than one hundred and

fifty thousand (150,000) inhabitants, as shown by the latest United States Census, and containing two cities of fifty thousand (50,000) population, or more, each, as shown by the said Census, said county composing two or more Judicial Districts, the sheriff shall have power, by writing, to appoint sixteen (16) deputies for his said county, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principal; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath which shall be endorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office. A list of these appointments shall be posted up in a conspicuous place in the county clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. The salaries of the deputies herein provided for shall be paid monthly by the sheriff out of the Fees of Office as provided in Article 3891 and Article 3902, Revised Civil Statutes, Texas, 1925.

[Acts 1931, 42nd Leg., p. 809, ch. 332, § 1.]

**Art. 6869a. May Appoint Additional Deputies**

[Text as added by Acts 1931, 42nd Leg., p. 818, ch. 337, § 1]

The sheriff in any county in this State may employ not to exceed three (3) additional deputies in excess of those now authorized by law, for the purpose of enforcing the law in counties with a population of three hundred forty thousand (340,000) or over, according to the last Federal Census; the compensation of such deputies shall be fixed by the Commissioners' Court of said County, and the same shall be paid out of the general fund of said county. Provided that said deputies when so appointed shall each before entering upon his duty execute a good and sufficient bond with two or more sureties, to be approved by the Commissioners' Court of said County in the sum of \$2,500.00 each, payable to the County Judge of the County and his successors in office, conditioned that he will well, truly and faithfully execute and due return make of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of such process or precept to the persons to whom the same are due, or to their lawful attorney, that he will fairly and faithfully perform all such duties as may be required of him by Law, which bond when so executed shall be recorded in the office of the Clerk of the County Court and deposited in said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered.

[Acts 1931, 42nd Leg., p. 818, ch. 337, § 1.]

**Art. 6869b. Appointment of Deputies in Counties of Less Than 20,000 Population and Property Valuation of Over \$100,000,000**

Provided that in counties having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and having a property valuation in excess of One Hundred Million Dollars (\$100,000,000), according to the approved State and County tax rolls for the preceding year, the sheriff, in the manner now prescribed by law, shall have the authority to appoint not to exceed fourteen (14) deputies, said number to include Court bailiffs and jailers, and said deputies to receive the compensation now allowed by law.

[Acts 1939, 46th Leg., Spec.L., p. 944, § 1.]

**Art. 6869c. Number of Deputies in Counties of 197,000 or Over**

In counties having a population in excess of one hundred ninety seven thousand five hundred (197,500) according to the last preceding Federal Census, the provisions of Article 6869, Revised Civil Statutes of Texas, of 1925, as amended, insofar as such limits the number of deputies allowable to sheriffs shall not apply, but the sheriff in any such county shall have the number of deputies allowed him by the Commissioners' Court of such county.

[Acts 1934, 43rd Leg., 2nd C.S., p. 121, ch. 56, § 1.]

**Art. 6869d. County Police Force in Counties of 210,000 or More**

Sec. 1. In every county of this state having a population of two hundred ten thousand (210,000) or more, according to the last preceding United States census, there is hereby created a county police force, to be composed of such number of patrolmen not less than six, as may be fixed by the Commissioner's Court. All of said patrolmen shall be appointed by the sheriff, subject to approval by the Commissioners' Court, and one of their number shall be so appointed chief of the county police.

Sec. 2. Each of said patrolmen shall be deputized by the sheriff and shall have the power and authority of a Deputy Sheriff, and all laws of this state applicable to deputy sheriffs shall apply to such patrolmen, except where they may be in conflict with this Act. They shall hold their position until removed by the sheriff, with the approval of the Commissioner's Court.

Sec. 3. The salary of the patrolmen and of the chief of county police shall be fixed by the Commissioner's Court and paid out of the General Fund of the county. It shall be the duty of such patrolmen to carefully patrol, either in a motor car or in a motorcycle all the highways of the county located outside of the corporate limits of the county seat thereof, and they shall each be required to furnish a motorcycle or motorcar, and their salary shall include their compensation for furnishing such car and the cost of maintaining and operating the same. Such patrolmen shall perform their

duties under rules and regulations prescribed and promulgated by the Commissioners' Court. Such patrolmen shall devote their entire time when on duty to patrolling that part of the county outside of the corporate limits of the county seat and to matters pertaining to that service.

Sec. 4. All fees earned by such patrolmen or accruing to the sheriff by reason of their services shall be paid to the county for the use of the general county fund.

[Acts 1929, 41st Leg., ch. 150, p. 326.]

**Art. 6869e-1. Counties of 500,000 or More; "Night Chief Deputy," Appointment and Salary of**

In all counties having a population of five hundred thousand (500,000) or more, according to the last preceding Federal Census, in addition to all other deputies, assistants and employees which he is authorized to appoint, the Sheriff shall be entitled to apply for the appointment of a second first assistant, or Chief Deputy, who shall be known as "Night Chief Deputy." Such additional first assistant or Chief Deputy shall be appointed in the method, manner and under the conditions now provided by law for other deputies, and the same rules and regulations fixed by law with respect to the authority and duties of other deputies of this class shall apply to them. This deputy shall receive a salary within the limits now fixed by law for chief deputy, subject to the laws and regulations governing the appointment, employment and payment of other chief deputies. Provided no person shall be appointed Night Chief Deputy who shall not have served as a deputy sheriff for at least two (2) years prior to the date of such appointment.

[Acts 1943, 48th Leg., p. 77, ch. 61, § 1.]

**Art. 6869f. Deputies, Including Bailiffs and Jailors, in Certain Counties of 27,000 to 30,000 and 36,000 to 37,500**

Provided that in all counties having a population of not less than twenty-seven thousand (27,000) nor more than thirty thousand (30,000), according to the last preceding Federal Census, and having a property valuation in excess of Ninety Million (\$90,000,000.00) Dollars, according to the approved state and county tax rolls for the preceding year; and in all counties having a population of not less than thirty-six thousand (36,000) nor more than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having a property valuation in excess of Fifty Million (\$50,000,000.00) Dollars, according to the approved state and county tax rolls for the preceding year, the sheriff of said counties, in the manner now prescribed by law, shall have the authority to appoint not to exceed thirty (30) deputies, said number to include court bailiffs and jailors, and said deputies shall receive such compensation as may be fixed and allowed by the Commissioners Court of any such county.

[Acts 1947, 50th Leg., p. 535, ch. 315, § 1.]

**Art. 6870. Responsible for Their Acts**

Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties.

[Acts 1925, S.B. 84.]

**Art. 6871. May Employ Guards**

Whenever in any county it becomes necessary to employ guards for the safekeeping of prisoners and the security of jails, the Sheriff may, with the approval of the Commissioners Court, or in case of emergency, with the approval of the County Judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said Court, and paid out of the County Treasury. Provided further, that in all counties in this State, having a population of more than one hundred and forty thousand (140,000) inhabitants and less than two hundred and ninety thousand (290,000) inhabitants, according to the last preceding Federal Census, no guard, matron, jailer, or turnkey shall work more than eight (8) hours in one day. In all counties coming under the provisions of this Act,<sup>1</sup> at least one man shall be on guard on each floor of said jail where male prisoners are kept, and at least one matron shall be on guard on each floor where female prisoners are kept; and that not less than two (2) employees shall be on guard in the main office of said jail at any one time. In case of emergency, those coming under the provisions of the Act shall be subject to the call of the Sheriff.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., Spec.L., p. 943, § 1.]

<sup>1</sup> This article and art. 6871a.

**Art. 6871a. Violation of Act; Penalty**

Anyone charged with the responsibility of enforcing this Act<sup>1</sup> shall be guilty of a misdemeanor if convicted of violating any of the provisions of this Act, and upon conviction thereof shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

[Acts 1939, 46th Leg., Spec.L., p. 943, § 2.]

<sup>1</sup> This article and art. 6871.

**Art. 6872. Control of Courthouse**

Sheriffs shall have charge and control of the courthouses of their respective counties, subject to such regulations as the commissioners court may prescribe; and the official bonds shall extend to and include the faithful performance of their duties under this article.

[Acts 1925, S.B. 84.]

**Art. 6873. Shall Execute Process**

Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to

do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars at the discretion of the court, which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain.

[Acts 1925, S.B. 84.]

#### Art. 6874. Legislative Process

Sheriffs are required also to execute all subpoenas and other process issued by the Speaker of the House of Representatives, or the President of the Senate, or chairman of a committee of either house of the Legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process.

[Acts 1925, S.B. 84.]

#### Art. 6875. Repealed by Rules of Civil Procedure, Acts 1939, 46th Leg., p. 201, § 1

#### Art. 6876. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(e), eff. Jan. 1, 1974

#### Art. 6877. Unfinished Business

When any sheriff or any constable shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself.

[Acts 1925, S.B. 84.]

#### Art. 6877-1. Transportation of Sheriffs and Deputies; Allowance for Expenses

The County Commissioners Courts of this State are directed to supply and pay for transportation of sheriffs of their respective counties and their deputies to and from points within this State, under one of the four (4) following Sections:

(a) Such sheriffs and their deputies shall be furnished adequate motor transportation including all expense incidental to the upkeep and operation of such motor vehicles.

(b) Motor vehicles shall be furnished to such sheriffs and their deputies who may furnish gas and oil, wash and grease, incidental to the operation of such vehicles; for which gas and oil, wash and grease, such sheriffs and deputies shall be compensated at a rate not to exceed six cents (6¢) per mile for each mile such vehicle is operated in the performance of the duties of his office.

(c) Alternatively such County Commissioners Courts may allow sheriffs and their deputies in their respective counties to use and operate cars on official busi-

ness which cars are personally owned by them for which such officers shall be paid not less than eight cents (8¢) per mile nor more than fifteen cents (15¢) per mile for each mile traveled in the performance of official duties of their office.

(d) All compensation paid under the provisions of this Act shall be upon a sworn statement of such sheriff.

[Acts 1947, 50th Leg., p. 357, ch. 204, § 1; Acts 1961, 57th Leg., p. 707, ch. 332, § 1.]

#### Art. 6877-2. Automobile Allowance to Sheriffs and Deputies in Counties of 350,000 Inhabitants

In each county in this State having a population of three hundred fifty thousand (350,000) inhabitants, or more, according to the last preceding Federal Census, where the county does not furnish the sheriff or his deputies automobiles, the sheriff and the deputy sheriffs may each be allowed an automobile allowance in a sum to be determined by the Commissioners Court, provided it shall not exceed Ten (10¢) Cents per mile for each mile traveled on official business outside the county. Such automobile allowance shall be paid upon a sworn statement of the sheriff or his deputies.

[Acts 1953, 53rd Leg., p. 685, ch. 261, § 1.]

#### Art. 6877-3. Duty Hours of Peace Officers in Counties of 100,000 to 120,000

(a) No sheriff, deputy, constable, or other peace officer of any county, or of any city, town, or village located within a county, such county having a population of not less than 100,000 nor more than 120,000, according to the last preceding federal census, shall be required to be on duty more than 48 hours a week.

(b) Subsection (a) shall not apply to a peace officer who is called on by a superior officer to serve during an emergency situation as determined by the superior officer.

(c) Any hours of duty over 48 hours a week compiled by a peace officer under Subsection (b) may be treated as "overtime" and may be deducted from required hours of duty in some future week. In no event, however, shall "overtime" be used more than one year after it is compiled, and permission of the superior officer must be obtained by the peace officer who is seeking to use the "overtime."

[Acts 1969, 61st Leg., p. 598, ch. 203, § 1, eff. May 14, 1969; Acts 1971, 62nd Leg., p. 1821, ch. 542, § 20, eff. Sept. 1, 1971.]

#### Art. 6877-4. Petty Cash Fund for Sheriff's Department in Counties Over 1,000,000

The commissioners court of every county in the state which has a population of more than 1,000,000, according to the last preceding federal census, may establish a petty cash fund not to exceed \$5,000 for the sheriff's department. This amount shall be appropriated from the general funds of the county. Unless otherwise authorized by resolution of the commissioners court, the petty cash fund may only be used to permit the advancement of funds to of-

ficers and employees of the sheriff's department who are required to travel outside the county to investigate or to obtain custody of prisoners.

[Acts 1973, 63rd Leg., p. 705, ch. 300, § 1, eff. June 11, 1973.]

## 2. CONSTABLES

### Art. 6878. Election and Term

The qualified voters of each justice precinct at each general election shall elect a constable for such precinct for a term of two years.

[Acts 1925, S.B. 84.]

#### Increase in Term of Office

*Const. art. 5, § 18, was amended in November 1954 to increase the term of office of constables from two to four years.*

### Art. 6879. Appointment of Deputies

When in any such justice precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies who shall qualify as required of deputy sheriffs; and provided, that, when in any such justice precinct there may be a city of forty thousand or more inhabitants, such constable may appoint five deputies and no more, who shall qualify as required of deputies; provided, such constable shall first make written application to the commissioners court of his county, showing the necessity therefor, giving the name of each proposed appointee, for the approval and confirmation of said court. In justice precincts which do not contain a city of eight thousand or more inhabitants, said constable may appoint no more than one deputy who shall qualify in such manner as is required by law.

[Acts 1925, S.B. 84.]

### Art. 6879a. Deputy Constables in Justice Precincts Having City or Town of Certain Population; Appointment

Sec. 1. The duly elected Constable in each Justice Precinct having a city or town of less than eight thousand (8,000) population according to the preceding Federal Census may appoint one (1) Deputy and no more; and each Justice Precinct having a city or town of eight thousand (8,000) and less than forty thousand (40,000) population according to the preceding Federal Census may appoint two (2) Deputies and no more; and in each Justice Precinct having a town or city of forty thousand (40,000) population or more according to the preceding Federal Census may appoint five (5) Deputies and no more, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs.

Sec. 2. When the Constable in each and every instance named and described in the preceding section of this Act shall desire to make appointment of a Deputy or Deputies, as the case may be, said Constable shall first make

written application to the Commissioners' Court of his County showing that it is necessary for such Constable to have the Deputy or Deputies requested in order to properly handle the business of his office originating in the Precinct in which such Constable has been elected, giving the name of each proposed appointee; and if the Commissioners' Court shall find that the Constable is in need of the Deputy or Deputies requested to handle the business originating in his Precinct, then and in that event, and in that event only, the Commissioners' Court shall approve and confirm the appointment of the Deputy or Deputies provided by this Act.

Sec. 3. Any person who serves as a Deputy Constable without the provisions hereof having been complied with relative to his appointment or any Constable who issues a Deputyship without the consent and approval of the Commissioners' Court shall be fined not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00).

[Acts 1931, 42nd Leg., p. 503, ch. 280.]

### Art. 6879b. Responsible for Deputies' Acts

Constables shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and the sureties of said deputies as any person can have against a constable and his sureties.

[Acts 1035, 44th Leg., p. 544, ch. 231, § 1.]

### Art. 6880. Unorganized Counties

The commissioners courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each unorganized county attached to said counties for judicial purposes, in accordance with the laws governing such appointments in organized counties.

[Acts 1925, S.B. 84.]

### Art. 6881. Bond and Oath

Each person who may be elected to the office of Constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties, to be approved by the Commissioners Court of his county, for such sum as may be directed by said Court, not less than Five Hundred Dollars (\$500.00) nor more than Fifteen Hundred Dollars (\$1,500.00), payable to the Governor and his successors in office, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the oath of office prescribed by the Constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the Clerk of the County Court, and deposited in said office; said bond shall not be void on the first recovery, but may be sued on from time to time in

the name of the party injured until the whole amount thereof is recovered.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 287, ch. 115.]

#### Art. 6882. De Facto Constable

Whenever any person is elected or appointed to the office of constable and has given bond and taken said oath, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

[Acts 1925, S.B. 84.]

#### Art. 6883. Neglect to Qualify

Whenever any person elected constable shall neglect or refuse to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant.

[Acts 1925, S.B. 84.]

#### Art. 6884. Failure to Give New Bond

Whenever any of the sureties of a constable shall die, remove permanently from the State or become insolvent, or are released from liability in accordance with law, or whenever the commissioners court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security. If such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers.

[Acts 1925, S.B. 84.]

#### Art. 6885. Duties in General

Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, attend upon all justice courts held in his precinct and perform all such other duties as may be required of him by law.

[Acts 1925, S.B. 84.]

#### Art. 6886. May Summon Posse

When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused.

[Acts 1925, S.B. 84.]

#### Art. 6887. Failure to Execute or Return Process

If any constable shall fail or refuse to execute and return, according to law, any process,

warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, not less than ten nor more than one hundred dollars, with costs; which fine shall be for the benefit of the party injured. Said constable shall have ten days' notice of such motion.

[Acts 1925, S.B. 84.]

#### Art. 6888. Failure to Pay

If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over.

[Acts 1925, S.B. 84.]

#### Art. 6889. Jurisdiction

Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law.

[Acts 1925, S.B. 84.]

#### Art. 6889a. Automobile Expense; Allowance to Constables in Certain Precincts in Counties Over 500,000

The constable of each precinct having a population of sixty-five thousand (65,000) or more situated in counties having a population of more than five hundred thousand (500,000), both according to the last preceding or any future Federal Census, may be allowed not exceeding Fifty Dollars (\$50) per month out of the General Fund as automobile expense, to be determined by the Commissioners Court. Such allowance shall be paid and be subject to all of the laws, rules and regulations in such counties governing the accounting for expenses, budgets, approval, depositories and countersignature of warrants, it being the intention of this Act merely to authorize such an allowance. This Law shall be cumulative of other laws relating to the constable in such counties, except where such Statutes conflict with this enactment, and in such cases this Law shall control.

[Acts 1947, 50th Leg., p. 391, ch. 219, § 1.]

#### Art. 6889b. Automobile Allowance in Counties of 220,000 to 350,000

In addition to the salaries now provided by law, for Constables and Deputy Constables, in counties having a population of not less than two hundred and twenty thousand (220,000) nor more than three hundred and fifty thousand (350,000), according to the last preceding or any future Federal Census, and having a Justice Precinct or precincts wherein is located a city or town of not less than one hundred and seventy-five thousand (175,000) nor more than two hundred and sixty-five thousand

(265,000) population, according to the last preceding or any future Federal Census, and where the office of the Constable of such precinct or precincts is located in the Courthouse of such counties, there shall be paid to each regularly elected or appointed Constable, and to each regularly appointed Deputy Constable, the sum of Fifty Dollars (\$50) monthly to be paid by warrant drawn on the officers' salary fund or general fund, to compensate said Constable and Deputies in the official discharge of their duties, said allowances to be paid upon the certificate of such Constables, that the automobiles of such Constables and Deputies were in official use.

[Acts 1949, 51st Leg., p. 519, ch. 284, § 1.]

**Art. 6889c. Repealed by Acts 1961, 57th Leg., p. 1060, ch. 472, § 2, eff. June 17, 1961**

**Art. 6889d. Transportation or Automobile Allowance; All Counties**

Sec. 1. The County Commissioners Courts of this State are hereby authorized to supply or pay for transportation of constables and deputy constables of the respective counties and justice precincts to and from points within this State, under one of the four following subsections:

(a) Constables and deputy constables may be furnished adequate motor transportation including all expense incidental to the upkeep and operation of such motor vehicles.

(b) Motor vehicles may be furnished to constables and deputy constables who may furnish gas and oil, wash and grease, incidental to the operation of such vehicles; for which gas and oil, wash and grease, such constables and deputy constables may be compensated at a rate not to exceed six cents (6¢) per mile for each mile such vehicle is operated in the performance of the duties of his or their office.

(c) County Commissioners Courts may allow constables and deputy constables in the respective counties and justice pre-

incts to use and operate cars on official business personally owned by them for which such officers may be paid not less than eight cents (8¢) per mile nor more than fifteen cents (15¢) for each mile traveled in the performance of official duties of their office.

(d) All compensation paid under the provisions of this Act shall be upon a sworn statement of such constable or deputy constable.

Sec. 2. If any section, subsection, paragraph, sentence or portion of this Act is held invalid, such holding shall not affect the validity of the remaining portions of this Act; and the Legislature hereby declares that it would have enacted such remaining portions despite such invalidity.

[Acts 1953, 53rd Leg., p. 56, ch. 45; Acts 1961, 57th Leg., p. 1060, ch. 472, § 1.]

**Art. 6889e. Counties Over 600,000; Two-Way Car Radios**

Sec. 1. In each county in this State having a population of six hundred thousand (600,000) inhabitants or more according to the last preceding Federal Census, the Commissioners Court, in its discretion, may furnish all constables and/or deputy constables two-way radios to be used in connection with the performance of their official duties. It is expressly understood that the provisions of this Act shall be applicable to all constables and/or deputy constables in counties having a population of six hundred thousand (600,000) or more inhabitants regardless of whether the constables and/or deputy constables drive county owned vehicles or their own personal cars in the performance of the duties of their offices.

Sec. 2. The cost of the two-way radios, the installation and charges in connection therewith, all necessary repairs that may be made thereon and other expenses in connection therewith shall be paid out of the general fund of the county.

[Acts 1955, 54th Leg., p. 521, ch. 157.]

## TITLE 120A

### STATE AND NATIONAL DEFENSE

#### GENERAL PROVISIONS

##### Article

- 6889-1. Expired.  
6889-2. Military Zones Adjacent to Military Establishments; Regulations; Enforcement.

#### COMMUNISM

- 6889-3. Texas Communist Control Law.  
6889-3A. Suppression of Communist Party and Related Organizations.

#### CIVIL DEFENSE

- 6889-4. Repealed.  
6889-5. Interstate Civil Defense and Disaster Compact.  
6889-6. Disaster Act of 1973.

#### GENERAL PROVISIONS

Art. 6889-1. Expired April 16, 1945

Art. 6889-2. Military Zones Adjacent to Military Establishments; Regulations; Enforcement

##### Military Establishment

Sec. 1. For the purpose of this Act, any navy or coast guard base, camp, station, yard or section base shall be known as a military establishment.

##### Establishment of Military Zones

Sec. 2. The County Commissioners Courts having within the limits of said county any military establishments are hereby authorized to set up and create restricted military zones adjacent to such military establishment.

##### Limits of Military Zones

Sec. 3. The limits of said military zones shall be set forth in the minutes of said courts; that appropriate signs shall be placed by all roads or passageways leading into said zones showing that such zones are restricted areas. That such zones shall not extend more than one mile from the boundary lines of any military establishment.

##### Special Regulations

Sec. 4. The Commissioners Court shall be authorized to establish special regulations for such zones as to speed of motor vehicles, parking of vehicles, and taking of pictures.

##### Enforcement of Regulations

Sec. 5. In order to properly police said zones the Commissioners Court shall be authorized to empower the civilian or military guards at such military establishments to enforce the regulations established for such military zones.

##### Penalty

Sec. 6. Any person, association of persons, firm or corporation who shall violate any of the regulations prescribed for military zones, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not

less than One Hundred (\$100.00) Dollars or by imprisonment in the county jail for not less than ten (10) days, or more than two (2) years.

[Acts 1943, 48th Leg., p. 458, ch. 308.]

#### COMMUNISM

Art. 6889-3. Texas Communist Control Law  
Communist Defined

Sec. 1. A "Communist" is a person who:

(A) Is a member of the Communist Party, notwithstanding the fact that he may not pay dues to, or hold a card in, said Party; or

(B) Knowingly contributes funds or any character of property to the Communist Party; or

(C) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence; or

(D) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites.

##### Definition of Communist Party

Sec. 2. The "Communist Party" is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which in any manner advocates, or acts to further, the world Communist movement.

##### Definition of Communist Front Organization

Sec. 3. A "Communist Front Organization" is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement.

##### Registration

Sec. 4. (A) Each person remaining in this State for as many as five (5) consecutive days after the effective date of this Statute, who is a Communist or is knowingly a member of a

Communist Front Organization, shall register with the Department of Public Safety of the State of Texas on or before the fifth consecutive day that such person remains in this State; and, so long as he remains in this State, shall reregister annually with said Department between the first and fifteenth days of January.

(B) Such registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the State of Texas, sources of income, place of birth, places of former residence, and features of identification, including fingerprints, of the registrant; organizations of which registrant is a member; names of persons known by registrant to be Communists or members of any Communist Front Organization; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute.

(C) Each and every officer of the Communist Party and each and every officer of Communist Front Organizations, knowing said Organizations to be Communist Front Organizations, shall register or cause to be registered said Party or Organizations with the Department of Public Safety, if said Party or Organizations have any members who reside, permanently or for a period of time more than thirty (30) days, in the State of Texas. Such registration shall be under oath and shall include the name of the organization, the location of its principal office and of its offices and meeting places in the State of Texas; the names, real and assumed, of its officers; the names, real and assumed, of its members in the State of Texas and of any person who has attended its meetings in the State of Texas; a financial statement reflecting receipts and disbursements and by whom and to whom paid; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute. Such registration shall be made within thirty (30) days after the effective date of this Statute, and thereafter at such intervals as are directed by the Department of Public Safety.

(D) Failure to register as herein required, or the making of any registration which contains any material false statement or omission, shall constitute a felony and shall be punishable by a fine of not less than One Thousand Dollars (\$1,000) or more than Ten Thousand Dollars (\$10,000), or by imprisonment of not less than two (2) or more than ten (10) years, or by both.

(E) Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the records shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this State, of the United States or of any State or Territory of the United States. At the discretion of the Department of Public Safety,

such records may also be open for inspection by the general public or by any member thereof.

#### Sabotage

Sec. 5. It shall be a felony, punishable by a term in the penitentiary of not less than two (2) nor more than twenty (20) years for any person, with the intent to injure the United States, the State of Texas, or any facilities or property used for national defense, to sabotage or destroy, or to attempt to sabotage or destroy, any property, facility or service that is being used or is to be used in connection with national defense. Should any loss of life occur by reason of such sabotage or destruction, or by reason of any attempted sabotage or destruction of such character, the person committing or attempting to commit same shall be guilty of murder with malice aforethought and shall be punished by death, or by confinement in the penitentiary for life or for any term of years not less than two (2). The word "sabotage" as used herein means the wilful and malicious infliction of physical damage or injury to property. The penalty herein provided shall be cumulative of all other penalties which might be imposed by virtue of the fact that the acts constituting an offense under this Statute also constitute separate offenses under other laws of this State.

#### Elections

Sec. 6. The name of any Communist or of any nominee of the Communist Party shall not be printed upon any ballot used in any primary or general election in this State or in any political subdivision thereof.

#### Public Office

Sec. 7. No person may hold any nonelective position, job or office for the State of Texas, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the State of Texas, or of any political subdivision thereof, where reasonable grounds exist, on all of the evidence, for the employer or other superior of such person to believe that such person is a Communist or a knowing member of a Communist Front Organization.

#### Enforcement

Sec. 8. The Attorney General of the State of Texas, all District and County Attorneys, the Department of Public Safety, and all law enforcement officers of this State shall each be charged with the duty of enforcing the provisions of this Statute.

#### Partial Unconstitutionality

Sec. 9. If any section, subparagraph, sentence, phrase, part or application of this Statute shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions hereof, and the Legislature here declares that it would have enacted such remaining portions notwithstanding any

holding of unconstitutionality with respect to any other portions of this Statute.

**Cumulative Character**

Sec. 10. This Statute is cumulative of all existing laws and does not repeal any such laws.

**Short Title**

Sec. 11. This Act may be cited as the "Texas Communist Control Law."

[Acts 1951, 52nd Leg., p. 10, ch. 8.]

**Art. 6889-3A. Suppression of Communist Party and Related Organizations**

**Legislative Finding and Declaration**

Sec. 1. Upon evidence and proof already presented before this Legislature, Congress, the courts of this State, and the courts of the United States, it is here now found and declared to be a fact that there exists an international Communist conspiracy which is committed to the overthrow of the government of the United States and of the several States, including that of the State of Texas, by force or violence, such conspiracy including the Communist Party of the United States, its component or related parts and members, and that such conspiracy constitutes a clear and present danger to the government of the United States and of this State.

**Illegality of Communist Party and Component or Related Organizations; Dissolution; Forfeiture of Charter; Property, Etc.**

Sec. 2. The Communist Party of the United States, together with its component or related parts and organizations, no matter under what name known, and all other organizations, incorporated or unincorporated, which engage in or advocate, abet, advise, or teach, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, are hereby declared to be illegal and not entitled to any rights, privileges, or immunities attendant upon bodies under the jurisdiction of the State of Texas or any political subdivision thereof. It shall be unlawful for such Party or any of its component or related parts or organizations, or any such other organization, to exist, function, or operate in the State of Texas. Any organization which is found by a court of competent jurisdiction to have violated any provisions of this Section, in a proceeding brought for that purpose by the District Attorney, Criminal District Attorney, or County Attorney, shall be dissolved, and if it be a corporation organized and existing under the laws of this State or having a permit to do business in this State, its charter or permit shall be forfeited, and, whether incorporated or unincorporated, all funds, records, and other property belonging to such Party or any

component or related part or organization thereof, or to any such other organization, shall be seized by and forfeited to the State of Texas, to escheat to the State as in the case of a person dying without heirs. All books, records, and files of any such organization shall be turned over to the Attorney General.

**Registration Not Evidence**

Sec. 3. The fact of the registration of any person under the provisions of Article 6889-3 of the Revised Civil Statutes of Texas as an officer or member of any Communist organization shall not be received in evidence against such person in any proceeding for any alleged violation of this Act.

**Prima Facie Evidence**

Sec. 4. As to any particular organization, proof of its affiliation with a parent or superior organization, inside or outside of this State, which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, shall constitute prima facie evidence that such particular organization engages in or advocates, abets, advises, or teaches, or has as a purpose the engaging in or advocating, abetting, advising, or teaching of, the same activities with the same intent.

**Unlawful Acts**

Sec. 5. It shall be unlawful for any person knowingly or willfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances as to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any of the above acts; or

(4) Assist in the formation of, or participate in the management of, or contribute to the support of, or become or remain a member of, or destroy any books or records or files of, or secrete any funds in this State of the Communist Party of the United States or any component or related part or organization thereof, or any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which

is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, knowing the nature of such organization.

#### Punishment for Violations

Sec. 6. Any person who shall violate any of the provisions of Section 5 of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than Twenty Thousand (\$20,000.00) Dollars, or imprisoned not less than one (1) year nor more than twenty (20) years in the State penitentiary, or may be both so fined and imprisoned. Provided that nothing in this Act shall be construed to repeal any part of Articles 83, 84, and 85 of the Penal Code of the State of Texas, relating to treason, nor any part of Articles 153 and 155 of the Penal Code of the State of Texas, relating to seditious writings and language; and provided further, that no person convicted of any violation of this Act shall ever be entitled to suspension or probation of sentence by the trial court.

#### Disqualification to Hold Office, Etc.

Sec. 7. Any person who shall be convicted finally by a court of competent jurisdiction of violating any of the provisions of this Act shall from the date of such final conviction automatically be disqualified and barred from holding any office, elective or appointive, or any other position of profit, trust, or employment with the government of the State of Texas or any agency thereof, or of any county, municipal corporation, or other political subdivision of the State.

#### Injunctions

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that such proceedings shall have priority over other cases in settings for hearing; provided further, that no such proceeding shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such proceeding, and an affidavit of such notice filed with the application for

such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

#### Search Warrants

Sec. 9. A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial, save and except those arising under this Act.

#### Enforcement of Law

Sec. 9a. The Internal Security Section of the Texas Department of Public Safety shall assist in the enforcement of the provisions of this Act, and for such purpose said Department may employ and pay the salaries and wages of such personnel and make such capital outlay purchases as it may deem necessary and pay necessary expenses, including but not limited to travel expenses (including automobile maintenance), all necessary operating expenses (including seasonal help), wages and salaries of employees, and make any and all other expenditures whatsoever necessary for the proper enforcement of the provisions of this Act; and for such purposes there is hereby appropriated out of the Operators and Chauffeurs License Fund such money as may be necessary, not to exceed the sum of Seventy-five Thousand

(\$75,000.00) Dollars for the biennium ending August 31, 1955.

[Acts 1954, 53rd Leg., 1st C.S., p. 9, ch. 3.]

### CIVIL DEFENSE

#### Art. 6889-4. Repealed by Acts 1973, 63rd Leg., p. 503, ch. 216, § 18, eff. May 28, 1973

This repealed article, the Texas Civil Protection Act, was derived from:

Acts 1951, 52nd Leg., p. 529, ch. 311.

Acts 1953, 53rd Leg., p. 641, ch. 247, § 1.

Acts 1953, 53rd Leg., p. 965, ch. 408, § 1.

Acts 1969, 61st Leg., p. 1381, ch. 420, §§ 1, 2.

Acts 1971, 62nd Leg., p. 2593, ch. 851, § 1.

See, now, art. 6889-6.

#### Art. 6889-5. Interstate Civil Defense and Disaster Compact

Sec. 1. Whereas the Congress of the United States of America has granted its consent to civil defense compacts by an Act entitled "Federal Civil Defense Act of 1950" (Public Law 920, Eight-first Congress, 2nd Session, Approved January 12, 1951<sup>1</sup>), the Legislature of this State hereby ratifies a compact on behalf of the State of Texas with any other state legally joining therein in the form substantially as follows:

#### INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting States solemnly agree:

"Article 1. The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the States that are parties hereto. The Directors or Co-ordinators of Civil Defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

"Article 2. It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the Representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs the party states shall so far as possible provide and

follow uniform standards, practices and rules and regulations including:

(a) Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services;

(b) Blackouts and practice blackouts, air raid drills, mobilization of civil defense forces and other tests and exercises;

(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party states;

(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks;

(h) The safety of public meetings or gatherings; and

(i) Mobile support units.

"Article 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

"Article 4. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

"Article 5. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on ac-

count of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

"Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two (2) or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

"Article 7. Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

"Article 8. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further that any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States Government may relieve the party state receiving aid from any liability and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

"Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, medical care, and burial services will be provided, the registration of

the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, medical care, and burial services. Such expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

"Article 10. This compact shall be available to any state, territory or possession of the United States, and the District of Columbia. The term 'state' may also include any neighboring foreign country or province or state thereof.

"Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

"Article 12. This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Civil Defense Agency and other appropriate agencies of the United States Government.

"Article 13. This compact shall continue in force and remain binding on each party state until the Legislature or the Governor of such party state takes action to withdraw therefrom. Such action shall not be effective until ninety (90) days after notice thereof has been sent by the Governor of the party state desiring to withdraw to the Governors of all other party states.

"Article 14. This compact shall be construed to effectuate the purpose stated in Article 1, hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any persons or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

"Article 15. This compact shall become binding and obligatory when it shall have been signed by the Governors of the respective states enumerated in this compact; when it

shall have been ratified by the Legislature of each state that requires ratification of said compact by the Legislature; and when ratified by the Congress of the United States. Failure of the United States Congress to ratify within sixty (60) days after transmittal, the consent shall be considered as granted. Notice of ratification by each of the states which are a party to this compact shall be given by the Governor of that state to the Governors of the other states and to the President of the United States, and the President is hereby requested to give notice to the Governor of each state of approval by the Congress of the United States."

Sec. 2. Duly authenticated copies of this Act shall, upon its approval, be transmitted to the Governor of each state, to the President of the Senate of the United States, to the Speaker of the House of Representatives, to the Federal Civil Defense Administration, to the Secretary of State of the United States, and to the Council of State Governments.

[Acts 1951, 52nd Leg., p. 531, ch. 312.]

1 50 U.S.C.A. Appendix, § 2251 et seq.

#### Art. 6889-6. Disaster Act of 1973

##### Short Title

Sec. 1. This Act may be cited as the "Texas Disaster Act of 1973."

##### Purposes

Sec. 2. The purposes of this Act are to:

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response; and

(8) assist in prevention of disasters caused or aggravated by inadequate plan-

ning for and regulation of public and private facilities and land use.

##### Limitations

Sec. 3. Nothing in this Act may be construed to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs, but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

(3) affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty, but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provisions of this Act.

##### Definitions

Sec. 4. As used in this Act:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action.

(2) "Political subdivision" means any county, city, or other unit of local government.

(3) "Organized volunteer groups" means organizations such as the American National Red Cross, The Salvation Army, Civil Air Patrol, Radio Amateur Civil Emergency Services, and other similar organizations recognized by federal or state statute, regulation, or memorandum.

##### The Governor and Disaster Emergencies

Sec. 5. (a) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(b) Under this Act, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) The governor may establish by executive order or proclamation a Defense and Disaster Relief Council, to advise and assist him in all matters relating to defense and disaster relief. The council shall be composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups he may deem appropriate.

(d) A disaster emergency shall be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat of disaster is imminent. The state of disaster emergency continues until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 30 days unless renewed by the governor. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. On termination by the legislature, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the State Office of Disaster Emergency Services, the secretary of state, and the county clerk or city secretary in the area or areas to which it applies.

(e) An executive order or proclamation of a state of disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and is authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency and the pursuant recovery period, the governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders

or plans, but nothing in this Act restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred upon the governor by law, he may:

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the state government and of each political subdivision of the state which are reasonably necessary to cope with the disaster emergency;

(3) transfer the direction, personnel, or functions of state departments and agencies or their units for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13 of this Act, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency;

(5) recommend the evacuation of all or part of the population from any stricken or threatened area in the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area, and the movement of persons and the occupancy of premises in the area;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; and

(9) make provision for the availability and use of temporary emergency housing.

#### State Division of Disaster Emergency Services

Sec. 6. (a) A Division of Disaster Emergency Services is established in the office of the governor. The division shall have a director appointed by and to serve at the pleasure of the governor. The division shall have coordinating and planning officers and other professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) The Division of Disaster Emergency Services shall prepare and maintain a comprehensive state disaster plan and keep it current. The plan may include:

(1) provisions for prevention and minimization of injury and damage caused by disaster;

(2) provisions for prompt and effective response to disaster;

(3) provisions for emergency relief;

(4) identification of areas particularly vulnerable to disasters;

(5) recommendations for zoning, building, and other land-use controls, safety measures or securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) provisions for assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(8) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(9) organization of manpower and channels of assistance;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state disaster plan with the disaster plans of the federal government; and

(12) other necessary matters.

(c) The Division of Disaster Emergency Services shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under Section 8 of this Act. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply, and may suggest revisions.

(d) In preparing and revising the state disaster plan, the Division of Disaster Emergency Services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the division shall encourage them also to seek advice from these sources.

(e) The state disaster plan or any part of it may be incorporated in regulations of the Division of Disaster Emergency Services or executive orders which have the force and effect of law.

(f) The Division of Disaster Emergency Services shall:

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) promulgate standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate training programs and programs of public information;

(7) make surveys of public and private industries, resources, and facilities in the state which are necessary to carry out the purposes of this Act;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed upon if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, executive orders, proclamations, and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

#### Financing

Sec. 7. (a) It is the intent of the legislature and declared to be the policy of the state that funds to meet disaster emergencies always be available.

(b) The Disaster Emergency Funding Board, composed of the governor, the lieutenant governor, speaker of the house, chairmen of the senate and house appropriations committees and the director of the Division of Emergency Services, is established.

(c) A Disaster Contingency Fund is established which shall receive money appropriated

thereto by the legislature. Money in the Disaster Contingency Fund shall remain in the fund until expended.

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed on these funds in coping with a particular disaster are unreasonably great, he may, with the concurrence of the Disaster Emergency Funding Board, make funds available from the Disaster Contingency Fund. If money available from the Disaster Contingency Fund is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor, with the concurrence of the Disaster Emergency Funding Board may transfer and expend money appropriated for other purposes.

(e) Whenever the federal government or any other public or private agency or individual offers to the state, or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds as gifts, grants, or loans for purposes of civil defense or disaster relief, the governor, if required by the donor, and the political subdivision through its executive officer or governing body, may accept the offer in behalf of the state or its political subdivision. The governor or his designated agent is authorized to determine when a public calamity or disaster has occurred. Where any gift, grant, or loan is accepted by the state, the governor or, on his designation, the State Defense and Disaster Relief Council or the State Coordinator of Defense and Disaster Relief, or any other officer or agency the governor may designate, has authority to dispense the gift, grant, or loan directly to accomplish the purpose for which it was made, or to allocate and transfer to any political subdivision of this state services, equipment, supplies, materials, or funds in the amount he or his designated agent may determine. All these funds received by the state shall be placed in the state treasury in a special fund or funds and shall be disbursed by warrants issued by the comptroller of public accounts on order of the governor or his designated agent, who may be named by him either in a written agreement accepting the funds or in a written authorization filed with the secretary of state. Where the funds are to be used for the purchase of equipment, supplies, or commodities of any kind, it is not necessary that bids be obtained or that the purchases be approved by any other agency. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay. All political subdivisions of the state, including counties, municipalities, and all other political subdivisions of every nature, are authorized to accept and utilize all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or by the political subdivision.

Local and Interjurisdictional Disaster Agencies and Services

Sec. 8. (a) Each political subdivision within this state is within the jurisdiction of and served by the Division of Disaster Emergency Services and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county or interjurisdictional area.

(c) The governor shall determine which municipal corporations need disaster agencies of their own and shall recommend that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated in its borders but shall not have jurisdiction in a municipality having its own disaster agency. The Division of Disaster Emergency Services shall publish and keep current a list of municipalities required to have disaster agencies under this subsection. Nothing in this subsection may be construed as limiting the constitutional and statutory powers of local governments.

(d) Any provision of this Act or other law to the contrary notwithstanding, the governor may recommend that a political subdivision establish and maintain a disaster agency jointly with one or more contiguous political subdivisions, if he finds that the establishment and maintenance of an agency or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(f) The mayor, county judge, or other principal executive officer of each political subdivision in the state shall notify the Division of Disaster Emergency Services of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the service is obtained, and furnish additional pertinent information that the division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(h) The local or interjurisdictional disaster agency, as the case may be, shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster channels of assistance.

(i) Each shall have the power to make appropriations for defense and disaster relief in the manner provided by law for making appropriations for ordinary expenses of such political subdivisions and shall have power to enter into agreements for the purpose of organizing defense and disaster relief divisions, to provide for a mutual method of financing the organization of such units on a basis satisfactory to said political subdivisions, and shall have power to render aid to other subdivisions under mutual aid agreements provided that the functioning of said units shall be coordinated by the State Defense and Disaster Relief Council. For the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out the provisions of this Act, counties, incorporated cities and towns, including home-rule cities, may issue time warrants. These time warrants shall be issued in accordance with the provisions of Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes); provided that time warrants shall not be issued for financing permanent construction or improvements for civil defense purposes except on the right of a referendum vote as provided in Section 4, Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes).

#### Establishment of Interjurisdictional Disaster Planning and Service Areas

Sec. 9. (a) If the governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services. A finding of the governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, such as:

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage charac-

teristics, disaster potential, and presence of disaster-prone facilities or operations;

(4) the interrelated character of the counties in a multicounty area; or

(5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship, mutual aid, or an area organization for disaster, he shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes), any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact.

(c) If the other jurisdiction or jurisdictions with which the governor proposes to cooperate pursuant to Subsection (b) of this section have not enacted that compact, he may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after its text has been communicated to the legislature and provided that neither house of the legislature has disapproved it by adjournment of the next ensuing session competent to consider it or within 30 days of its submission, whichever is longer.

#### Intergovernmental Arrangements

Sec. 10. (a) This state has enacted into law and enters into the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes), with all states, as defined in that Act, bordering this state which have enacted or may enact the compact in the form substantially contained in Chapter 312, Acts of the 52nd Legislature, 1951 (Article 6889-5, Vernon's Texas Civil Statutes).

(b) The governor may enter into the compact with any state which does not border this state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

(c) Nothing in Subsections (a) and (b) of this section may be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

(d) If any person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster; this state shall give due consideration to the license, certificate, or other permit.

#### Local Disaster Emergencies

Sec. 11. (a) A local disaster emergency may be declared only by the governing body of

a political subdivision. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk as applicable.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under the declaration.

(c) No interjurisdictional agency or its official may declare a local disaster emergency, unless expressly authorized to do so by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

#### Disaster Prevention

Sec. 12. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster plans, the governor shall consider, on a continuing basis, steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority and competence they have, state agencies, including but not limited to those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of disaster prevention-related matters. The governor, from time to time, shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The Water Development Board and other state agencies, in conjunction with the Division of Disaster Emergency Services, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the Division of Disaster Emergency Services believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are

essential in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor on review of the recommendations finds after public hearing that the changes are essential, he shall make appropriate recommendations to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the governor, he shall so inform the legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The governor, at the same time that he makes his recommendations pursuant to Subsection (c) of this section, may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislature or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

#### Compensation

Sec. 13. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this Act are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of the state, except pursuant to statute or local law or ordinance.

(c) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this Act shall file a claim for compensation with the Division of Disaster Emergency Services in the form and manner the Division of Disaster Emergency Services provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the Division of Disaster Emergency Services, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood, or contravention of Article I, Section 17, of the Texas Constitution, or statutes pertaining to that section.

#### Communications

Sec. 14. The Division of Disaster Emergency Services shall ascertain in cooperation with the Criminal Justice Council or its successor agency what means exist for rapid and efficient communications in times of disaster emergencies. The division shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of their multipurpose use for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

#### Mutual Aid

Sec. 15. (a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the Division of Disaster Emergency Services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In reviewing local disaster plans, the governor or his agent shall consider whether

they obtain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor or his agent to require an interjurisdictional agreement or arrangement pursuant to Section 9 of this Act that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

#### Weather Modification

Sec. 16. The Division of Disaster Emergency Services shall keep continuously appraised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request, in the name of the governor, that the officer or agency empowered to issue permits for weather modification operations suspend the issuance of the permits. On the governor's request, no permits may issue until the division informs the officer or agency that the danger has passed.

#### Severability

Sec. 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are held to be severable.

[Acts 1973, 63rd Leg., p. 493, ch. 216, eff. May 28, 1973.]

# TITLE 121

## STOCK LAWS

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### CHAPTER ONE. MARKS AND BRANDS

<b>Article</b>	
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#### Art. 6890. Owner's Mark and Brand

Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the county clerk of the county where such animals shall be. No person shall use more than one brand, but may record his

brand in as many counties as he deems necessary.

[Acts 1925, S.B. 84.]

#### Art. 6890a. Using Brand or Mark Not on Record

Whoever shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record shall be fined not exceeding five hundred dollars.

[1925 P.C.]

#### Art. 6890b. Altering Mark or Brand to One Unrecorded

Whoever shall alter or change any mark or brand upon any stock of his own, or under his control, without first having such changed mark or brand recorded, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

#### Art. 6890c. Branding or Marking Outside a Pen

Whoever shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked.

[1925 P.C.]

#### Art. 6891. County Brands

Each county shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county shall be as follows:

County.	Brand.
Anderson .....	A.A.
Andrews .....	A.N.
Angelina .....	A.L.
Aransas .....	A.R.
Archer .....	A.H.
Armstrong .....	A.M.
Atascosa .....	A.T.
Austin .....	A.U.
Bandera .....	B.A.
Bastrop .....	B.S.
Bailey .....	B.I.
Baylor .....	B.R.
Bee .....	B.E.
Bell .....	B.L.
Bexar .....	B.X.
Blanco .....	B.N.
Borden .....	B.D.
Bosque .....	B.
Bowie .....	B.O.
Brazoria .....	B.D.
Brazos .....	B.Z.
Briscoe .....	B.H.
Brown .....	B.W.
Burleson .....	B.U.

County.	Brand.	County.	Brand.
Burnet	B.T.	Hardeman	H.N.
Caldwell	C.A.	Hardin	H.D.
Calhoun	C.H.	Harris	H.S.
Callahan	C.L.	Harrison	H.X.
Cameron	C.M.	Hartley	H.T.
Camp	C.P.	Haskell	H.6.
Carson	C.R.	Hays	H.Y.
Cass	C.S.	Hemphill	H.M.
Castro	C.T.	Henderson	H.E.
Chambers	C.B.	Hidalgo	H.G.
Cherokee	C.K.	Hill	H.L.
Childress	C.D.	Hockley	H.K.
Clay	C.Y.	Hood	H.O.
Cochran	C.C.	Hopkins	H.P.
Coleman	C.E.	Howard	H.R.
Collin	C.I.	Houston	H.A.
Collingsworth	C.W.	Hunt	H.U.
Colorado	C.N.	Hutchinson	H.H.
Comal	C.O.	Jack	J.
Comanche	C.J.	Jackson	J.A.
Concho	C.V.	Jasper	J.P.
Cooke	C.U.	Jefferson	J.E.
Coryell	C.X.	Johnson	J.H.
Cottle	C.2.	Jones	J.O.
Crockett	C.3.	Karnes	K.
Crosby	C.4.	Kaufman	K.A.
Dallam	D.L.	Kendall	K.E.
Dallas	D.A.	Kent	K.T.
Dawson	D.N.	Kerr	K.R.
Deaf Smith	D.S.	Kimble	K.I.
Delta	D.T.	King	K.N.
Denton	D.O.	Kinney	K.O.
DeWitt	D.E.	Knox	K.X.
Dickens	D.I.	Lamar	L.A.
Dimmit	D.M.	Lamb	L.M.
Donley	D.N.	Lampasas	L.P.
Duval	D.D.	La Salle	L.S.
Eastland	E.A.	Lavaca	L.C.
Edwards	E.D.	Lee	L.E.
Ellis	E.L.	Leon	L.4.
El Paso	E.P.	Liberty	L.I.
Erath	E.R.	Limestone	L.T.
Falls	F.A.	Lipscomb	L.B.
Fannin	F.N.	Live Oak	L.O.
Fayette	F.E.	Llano	L.
Fisher	F.I.	Lubbock	L.K.
Floyd	F.L.	Lynn	L.N.
Fort Bend	F.B.	Madison	M.1.
Franklin	F.K.	Marion	M.2.
Freestone	F.R.	Martin	M.4.
Frio	F.O.	Mason	M.N.
Galveston	G.A.	Matagorda	M.R.
Gaines	G.I.	Maverick	M.K.
Garza	G.R.	McCulloch	M.C.
Gillespie	G.L.	McLennan	M.L.
Goliad	G.D.	McMullen	M.
Gonzales	G.O.	Medina	M.A.
Gray	G.Y.	Menard	M.D.
Grayson	G.N.	Milam	M.I.
Greer	G.	Mitchell	M.H.
Gregg	G.G.	Montague	M.E.
Grimes	G.M.	Montgomery	M.M.
Guadalupe	G.E.	Moore	M.O.
Hale	H.	Morris	M.S.
Hall	H.A.	Motley	M.T.
Hamilton	H.I.	Nacogdoches	N.S.
Hansford	H.F.	Navarro	N.A.

County.	Brand.
Newton	N.
Nolan	N.O.
Nueces	N.E.
Ochiltree	O.H.
Oldham	O.O.
Orange	O.
Palo Pinto	P.P.
Panola	P.A.
Parmer	P.R.
Parker	P.K.
Pecos	P.
Polk	P.K.
Potter	P.O.
Presidio	P.R.
Rains	R.
Randall	R.A.
Red River	R.R.
Refugio	R.E.
Roberts	R.S.
Robertson	R.O.
Rockwall	R.L.
Runnels	R.N.
Rusk	R.K.
Sabine	S.B.
San Augustine	S.A.
San Jacinto	S.J.
San Patricio	S.P.
San Saba	S.S.
Scurry	S.
Shackelford	S.D.
Shelby	S.H.
Sherman	S.N.
Smith	S.T.
Somervell	S.O.
Starr	S.R.
Stephens	S.E.
Stonewall	S.L.
Swisher	S.I.
Tarrant	T.A.
Taylor	T.E.
Terry	T.
Throckmorton	T.H.
Titus	T.I.
Tom Green	T.G.
Travis	T.S.
Trinity	T.R.
Tyler	T.L.
Upshur	U.P.
Uvalde	U.
Van Zandt	V.
Victoria	V.I.
Walker	W.K.
Waller	W.
Washington	W.N.
Webb	W.E.
Wharton	W.T.
Wheeler	W.H.
Wichita	W.A.
Wilbarger	W.R.
Williamson	W.I.
Wilson	W.L.
Wise	W.S.
Wood	W.O.
Yoakum	Y.
Young	Y.O.
Zapata	X.
Zavalla	X.X.

[Acts 1925, S.B. 84.]

#### Art. 6892. Owner May Use County Brand

The owners of all horses and cattle, in addition to their private brand, may place said county brand upon the neck of all horses and cattle owned by them.

[Acts 1925, S.B. 84.]

#### Art. 6893. Stock Removed From County

Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "County brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock.

[Acts 1925, S.B. 84.]

#### Art. 6894. To Furnish Lists

The Secretary of State shall furnish a printed list of the county brands to the county clerks of this State who shall securely post the same in their office.

[Acts 1925, S.B. 84.]

#### Art. 6895. Brands of Minors

Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded. The father or guardian shall be responsible for the proper use of such mark and brand of any such minor.

[Acts 1925, S.B. 84.]

#### Art. 6896. When Branded

Cattle shall be marked with the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep, and goats shall be marked with the ear mark of the owner on or before they are six months old.

[Acts 1925, S.B. 84.]

#### Art. 6897. Disputes Settled

If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, and the ear mark and brand of the oldest date shall have the preference.

[Acts 1925, S.B. 84.]

#### Art. 6898. Marks and Brands Recorded

The clerks of the county courts in their respective counties shall keep a well bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded.

[Acts 1925, S.B. 84.]

#### Repeals

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that*

*all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fee provisions, see note under article 3930.*

#### Art. 6898a. Clerk Improperly Recording Brand

Any county clerk who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed shall be fined not less than ten nor more than fifty dollars. [1925 P.C.]

#### Art. 6899. Records of Marks and Brands, Except County Brands, Void After October 1, 1943

Recording and Rerecording; Inapplicable to Certain Counties

Sec. 1. All records of marks and brands heretofore made as provided in this Chapter, except all county brands, shall become void and of no force and effect on the 1st day of October, 1943, and every person who has cattle, hogs, sheep, or goats shall have his mark and brand recorded or re-recorded in accordance with Article 6890 and Article 6898.

The legal owner of a brand and/or mark shall have a preferential right to record such brand and/or mark for a period of two (2) years from the 1st day of October, 1943, but if such preferential right is not exercised within such two (2) years the same shall be forfeited and such brand and/or mark shall be subject to registration by any person, and the first person to record the same shall be the owner of the same.

Any brand recorded in accordance with the requirements of this Act shall be considered as the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent the same as other personal property.

Any person may record such brand and/or mark as he may desire to use provided no other person has recorded such brand and/or mark, without regard to whether or not such person has previously recorded a brand and/or mark.

This Act shall not apply to any county which shall have re-recorded all brands and marks within the past five (5) years.

Ownership of More Than One Brand or Mark

Sec. 1a. At any place in the above and foregoing section of Article 6899 where the words "brand and/or mark" are used singularly, such words or language shall be construed as having a plural meaning and interpretation, so that hereafter any legal owner may have and own and record one or more brands and/or marks by otherwise complying with all the other provisions of this Article.

[Acts 1943, 48th Leg., p. 471, ch. 315; Acts 1945, 49th Leg., p. 321, ch. 235, § 1.]

#### Art. 6899a. Marks and Brands of Livestock in Matagorda and Wharton Counties

This Act shall apply to Matagorda and Wharton Counties only. In said Counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of 1925, shall within six months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not<sup>1</sup> be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1929, 41st Leg., p. 561, ch. 273, § 1; Acts 1931, 42nd Leg., p. 791, ch. 318, § 1.]

<sup>1</sup> So in enrolled bill. Session Laws omit word "not."

#### Art. 6899b. Marks and Brands of Livestock in Fort Bend County

This Act shall apply to Fort Bend County only. In said County each owner of any live stock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon

the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1935, 44th Leg., Spec.Laws, p. 1175, ch. 11, § 1.]

**Art. 6899c. Marks and Brands of Livestock in Jasper and Newton Counties**

This Act shall apply to Jasper and Newton Counties only. In said Counties each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the Counties; and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said Counties first recorded the same in the Counties, or in event it can not be ascertained from the records who first recorded same in the Counties, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said Counties shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said Counties. Immediately upon the taking effect of this Act the County Clerk of the Counties shall have this Act published in some newspaper of general circulation in the Counties for a period of thirty (30) days, which publication shall be paid for by the Counties out of the General County Fund.

[Acts 1937, 45th Leg., p. 652, ch. 322, § 1.]

**Art. 6899d. Superseded by Acts 1955, 54th Leg., p. 913, ch. 361, § 2**

**Art. 6899d-1. Marks and Brands of Livestock in Brazoria County**

This Act shall apply to Brazoria County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner who according to the present records of said County first recorded his mark and brand in the County shall have the right to have the same recorded in his name, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same

recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County once a week for four (4) consecutive weeks, which publication shall be paid for by the County out of the General County Fund.

[Acts 1955, 54th Leg., p. 913, ch. 361, § 1.]

**Art. 6899d-2. Marks and Brands of Livestock in Matagorda County**

This Act shall apply to Matagorda County only. Each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of 1925, as amended, shall within six months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1965, 59th Leg., p. 871, ch. 427, § 1.]

**Art. 6899e. Marks and Brands of Livestock in Chambers County**

This Act shall apply to Chambers County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County; without any cost to owner and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who ac-

ording to the present records of said County first recorded the same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1939, 46th Leg., Spec.Laws, p. 517.]

**Art. 6899f. Marks and Brands of Livestock in Gonzales County**

This Act shall apply to Gonzales County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1941, 47th Leg., p. 82, ch. 67, § 1.]

**Art. 6899g. Marks and Brands of Livestock in Austin and Colorado Counties**

This Act shall apply to Austin and Colorado Counties only. In said Counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of his home County. Such owners shall so record such marks and brands whether the

same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of his home County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said Counties shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said Counties. Immediately upon the taking effect of this Act the County Clerk of each of said Counties shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

[Acts 1941, 47th Leg., p. 358, ch. 196, § 1.]

**Art. 6899h. Marks and Brands of Livestock in Fayette County**

Sec. 1. This Act shall apply to Fayette County. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of Fayette County first recorded the same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

Sec. 2. The owner or owners of any brand or marks who have recorded such marks or brands shall re-record such brands or marks at the end of each ten-year period from the effective date of this Act.

[Acts 1943, 48th Leg., p. 250, ch. 151.]

**Art. 6899i. Marks and Brands of Livestock in Ochiltree County**

This Act shall apply to Ochiltree County only. In said county, each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall, within six (6) months after this Act takes effect, have his mark and brand for such stock recorded in the office of the County Clerk of said county. Such owner shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his own name, who, according to the present records of said county, first recorded the same in the county, or in the event it cannot be ascertained from the records who first recorded same in the county, then the person who has been using such mark and brand the longest shall have right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act, all records of marks and brands now in existence in said county shall no longer have any force or effect, and after the expiration of six (6) months, only the records made after this Act takes effect shall be examined and considered in recording marks and brands in said county. Immediately upon the taking effect of this Act, the County Clerk of said county shall have this Act published in some newspaper of general circulation in the county for a period of thirty (30) days, which publication shall be paid for by the county, out of the General County Fund. [Acts 1943, 48th Leg., p. 561, ch. 332, § 1.]

**Art. 6899j. Marks and Brands of Livestock in All Counties; Recording and Re-recording**

Sec. 1. (a) This Act shall apply to every county in this State. In all the counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of 1925 shall within six months after this Act takes effect have his mark and brand for such stock recorded in the office of the county clerk of the county. These owners shall record the marks and brands whether the brands and marks have been previously recorded or not.

(b) The owner shall have the right to have his mark and brand recorded in his name who according to the present records of the county first recorded the brand and mark in the county, or in event it can not be ascertained from the records who first recorded the brand and mark in the county, then the person who has been using such mark and brand the longest shall have the right to have the brand and mark recorded in his name.

(c) After the expiration of six months from the taking effect of this Act all records of marks and brands now in existence in the county shall no longer have any force or effect and after the expiration of six months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in the county.

(d) Immediately upon the taking effect of this Act the county clerk of the county shall have this Act published in some newspaper of general circulation in the county for a period of thirty days. The publication shall be paid for by the county out of the general county fund.

Sec. 2. All clerks in re-registering brands shall comply with Articles 6890 through 6899, inclusive, of the Revised Civil Statutes of Texas, 1925, as amended, and with Section 1, Chapter 273, Acts of the 41st Legislature, 1929, as amended (Article 6899a, Vernon's Texas Civil Statutes), and shall also be aware of and comply with Articles 1484, 1485, and 1486 of the Penal Code of Texas, 1925.<sup>1</sup>

Sec. 3. All brands and marks registered under the provisions of this Act shall be re-registered every 10 years in the manner prescribed in Section 1 of this act.

[Acts 1971, 62nd Leg., p. 1643, ch. 459, eff. Aug. 30, 1971.]

<sup>1</sup> Transferred; see, now, arts. 6997a, 6890c, 6898a, respectively.

**Art. 6899-1. Tattoo Marks for Hogs, Dogs, Sheep or Goats; Registration; Fees; Assignment; Filing in County; Punishment for Certain Offenses****Registration**

Sec. 1. Any person, firm, corporation, or association owning hogs, dogs, sheep, or goats in this State, shall have the right to register for exclusive use a distinctive tattoo mark not theretofore recorded, and to retain the exclusive use thereof, in accordance with the procedures and conditions hereinafter set forth in this Act. Nothing in this Act shall operate to invalidate or interfere with the use by the owner thereof of any tattoo mark or marks already recorded in the various county records of marks and brands on March 1, 1943.

**Administration**

Sec. 2. The Act shall be administered by the Department of Public Safety, and the Director of said Department is hereby charged with such administration in all particulars.

**Application for Registration**

Sec. 3. Application for such registration as hereinabove described shall be made to the Director of the Department of Public Safety, shall be signed by the applicant or his agent, and shall show the applicant's place of residence, his citizenship, the location of the livestock which he owns, the kind or kinds of such livestock, and shall name the place or part of the animal upon which the tattoo mark is to be placed.

To each application for a registration there shall be attached a drawing of the tattoo mark for which registration is sought, over the signature of the applicant or of his agent; provided that such drawing shall comply with the requirements of the Department of Public Safety, and that as many copies thereof shall be furnished as the Director may require.

Issuance of Certificate

Sec. 4. It shall be the duty of the Director to examine or cause to be examined each application for the registration of any tattoo mark, and upon satisfactory evidence that such registration should be made, to issue forthwith a certificate of registration.

Protest; Hearings

Sec. 5. Any person, firm, corporation, or association which believes himself or itself about to be damaged by the granting of a certificate of registration for the exclusive use of a tattoo mark, applied for under the provisions of this Act, may within twenty (20) days of the filing of such application file a written notice of protest, stating the grounds therefor, which notice shall be sworn to and filed with the Department of Public Safety. It shall then be the duty of the Director of the Department of Public Safety to take such steps and hold such hearings as he may deem necessary to determine whether the application in question shall be granted or denied, and the decision of the Director shall be final, provided that he shall give his reasons therefor, and that in case of the abuse of this discretion by the Director, the contestant may have recourse to the District Courts of the County where the contestant resides.

Fees

Sec. 6. The following fees shall prevail in the administration of this Act:

Each original application filed shall be accompanied by a fee of Five (\$5.00) Dollars.

Each notice of assignment shall be accompanied by a fee of One (\$1.00) Dollar.

Each notice of opposition to registration filed shall be accompanied by a fee of Ten (\$10.00) Dollars.

Collection of Fees

Sec. 7. The fees provided hereinabove shall be collected by the Director of the Department of Public Safety and remitted by him to the Comptroller, who shall cause such funds to be deposited by the State Treasurer in a special fund to be known as the Livestock Tattoo Fund; provided that said fund shall be used exclusively in the administration of this Act; provided that upon certification of the Director of the Department of Public Safety the Comptroller shall draw his warrant upon the State Treasurer in the General Revenue Fund.

Certificate of Registration

Sec. 8. The certificate of registration for the exclusive registration and use of any tattoo mark shall be assignable in connection with the good will of the ranch, farm, or other business in which the same is used, provided that such assignment shall not be valid unless and until notice of same has been filed in writing, sworn to by the assignor, with the Department of Public Safety; but such certificate of registration shall not be otherwise transferable.

Filing in County of Residence

Sec. 9. It shall be the duty of the Director to forward to the County Clerk of the applicant's residence a certified copy of said registration to be filed in the County Clerk's office of said County in a regular book for that purpose, the filing fees to be paid by the person so registering said tattoo mark and said filing fee shall not exceed the sum of Twenty-five (25¢) Cents.

Effect of Registration; Offenses

Sec. 10. The registration of a tattoo mark under the provisions of this Act shall create an exclusive right to use the same in this State, shall be prima facie evidence of ownership of the livestock so tattooed, in any criminal or civil actions in the Courts of this State; provided that any person who shall, without the consent of the owner, reproduce, counterfeit, copy, add to, take from, imitate, destroy or remove any such tattoo mark affixed to any livestock as heretofore enumerated herein, or who shall buy, sell, or barter for himself, or for any other person, or transport over the highways of this State, any livestock upon which any registered tattoo mark has been placed or fixed, without the consent of the owner of such livestock, or who shall aid the commission of any of the above described acts, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the State Penitentiary for a period of not less than two (2) nor more than twelve (12) years.

[Acts 1943, 48th Leg., p. 52, ch. 48; Acts 1947, 50th Leg., p. 244, ch. 140, § 1.]

Repeals

See note under article 6898.

CHAPTER TWO. PROTECTION OF LIVE STOCK [REPEALED]

Arts. 6900 to 6902. Repealed by Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52, § 29

CHAPTER THREE. SLAUGHTER AND SHIPMENT

Article

- 6903. Bill of Sale.
- 6904. Butchers to Report.
- 6904a. Failing to Report Animals Slaughtered.
- 6905. Recorded Before Driving.
- 6905a. Driving Stock to Market Without Bill of Sale.
- 6906. Sworn Descriptive Lists.
- 6907. Register of Cattle.
- 6907a. Auctioneer Selling Animal.
- 6908. Bond of Butcher.
- 6908a. Failure to Make Bond.
- 6908b. Butchers to Register.
- 6908c. Butcher to Keep Record.
- 6908d. Record Open for Inspection.
- 6908e. Slaughterers to Keep Record of Livestock Purchased or Slaughtered.
- 6908f-1. Butchering Unmarked or Unbranded Animals.
- 6908f-2. Exceptions to Preceding Article.
- 6908g. Purchasing Slaughtered Cattle Without Hide or Ears.
- 6909. Inspector's Record.
- 6909a. Inspector's Record; Penalty.
- 6910. Counties Exempt.
- 6910a. Counties Exempt.

**Art. 6903. Bill of Sale**

Upon the sale or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this State, the actual delivery of such animals shall be accompanied by a written transfer to the purchaser from the vendor, or party selling, giving the number, marks and brands of each animal sold and delivered. Upon the trial of the right of property in any such animal, the possession of such animal without said written transfer shall be prima facie illegal. Persons may dispose of stock animals of any said kind as they run in the range, by the sale and delivery of the brands and marks; and in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock, recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser.

[Acts 1925, S.B. 84.]

**Art. 6904. Butchers to Report**

Each person in this State engaged in the slaughter and sale of animals for market shall make a regular sworn report to each regular meeting of the commissioners court of the county, giving the number, color, age, marks and brands of every animal slaughtered by him since the last term of said court, to be filed with and kept on file by the county clerk. Each said report shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter. If any of the animals slaughtered have been raised by himself it shall be so stated in the report. Said report so made to said court may in the discretion of said clerk be destroyed after a period of five years.

[Acts 1925, S.B. 84.]

**Art. 6904a. Failing to Report Animals Slaughtered**

If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this State shall fail to report to the commissioners court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be fined not less than fifty nor more than three hundred dollars.

[1925 P.C.]

**Art. 6905. Recorded Before Driving**

Any person who shall purchase animals of any class named in Article 6903, for the purpose of driving to market out of the county where purchased, or out of the State, shall, before moving the animals out of the county where purchased, deposit with the county clerk

for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by each vendor, which, together with the address of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record under seal shall be returned to the purchaser upon payment of the recording fees.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6905a. Driving Stock to Market Without Bill of Sale**

Any person who may be found in any county of this State driving to market any animals such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any of such animals as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which said animals have been driven, shall be fined not exceeding two thousand dollars.

[1925 P.C.]

**Art. 6906. Sworn Descriptive Lists**

Persons intending to drive their own stock raised by themselves to market out of the county where raised, or out of the State, shall, before so driving, deposit with the county clerk for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list said clerk shall record and certify and return to the owner.

[Acts 1925, S.B. 84.]

**Art. 6907. Register of Cattle**

The commanders or agents of all vessels and the agents of all railroads on which cattle are exported from the State, and the proprietors or agents of all establishments for the slaughter of cattle within the State, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. Such register on the first day of each month shall be deposited with the county clerk of the county where the cattle were shipped or slaughtered. Said clerk shall at once copy the same in a well bound book to be kept for that purpose, and return the original to the party depositing it.

[Acts 1925, S.B. 84.]

**Art. 6907a. Auctioneer Selling Animal**

Whoever sells at auction any horse, mule, or ox, without first requiring from the party for whom such sale is made a written statement signed by him of the manner in which and the name and residence of the person from whom he acquired such animal, or fails within ten days after such sale to file with the clerk of the county court such written statement, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the name and residence of the seller and purchaser, shall be fined not less than fifty nor more than one hundred dollars.

[1925 P.C.]

**Art. 6908. Bond of Butcher**

Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on the business, in a sum not less than two hundred nor more than one thousand dollars, payable to the State of Texas, conditioned that he shall keep a true and faithful record in a book kept for that purpose of all cattle purchased or slaughtered by him, with a description of the animal including marks, brands, age, color, weight, and from whom purchased and the date thereof; that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another when the ear marks, or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. Any butcher or slaughterer of cattle who shall violate any condition of said bond may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given. All sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county.

[Acts 1925, S.B. 84.]

**Art. 6908a. Failure to Make Bond**

Whoever shall carry on the business of butcher or slaughterer of animals, without having filed with the clerk of the county court of the county in which he conducts such business the bond provided for by law, shall be fined not less than five nor more than two hundred dollars.

[1925 P.C.]

**Art. 6908b. Butchers to Register**

Before engaging in the business of slaughter and sale of animals for market, every person so

desiring must first register his name with the county clerk indicating his purpose to engage in such business. Upon failure to so first register his name, he shall be fined not less than five nor more than twenty-five dollars. Nothing herein applies to slaughter houses in this State slaughtering as many as three hundred cattle per day.

[1925 P.C.]

**Art. 6908c. Butcher to Keep Record**

Every person who shall carry on the business of butcher or slaughterer of animals and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased and slaughtered by him, together with a description of each animal, including brand, age, color, weight and from whom purchased and the date of purchase, or shall fail to have the hide and ears of such animal or animals inspected by the inspector or some magistrate within twenty days after such animal is slaughtered, shall be fined not less than twenty nor more than two hundred dollars.

[1925 P.C.]

**Art. 6908d. Record Open for Inspection**

The record provided for in article 1452 of this chapter shall be open to the inspection of all parties, and any butcher refusing to permit such inspection at any reasonable hour shall be fined not exceeding twenty-five dollars.

[1925 P.C.]

**Art. 6908e. Slaughterers to Keep Record of Livestock Purchased or Slaughtered****Sec. 1. When used in this Act:**

(a) The term "person" includes individuals, partnerships, associations, private corporations, municipal corporations and other public agencies.

(b) The term "slaughterer" means a person engaged in the business of slaughtering livestock for profit. The term "slaughterer" also includes those persons owning or operating a locker plant or plants and leasing, renting or furnishing space therein to others, for profit.

(c) The term "livestock" means cattle, hogs, sheep, and goats.

**Sec. 2.** Every slaughterer who purchases or slaughters livestock in this State shall keep a record in a bound volume of all such livestock purchased or slaughtered by him, which shall contain the following information:

(a) A description of the livestock by kind, color, sex, probable age, and the marks and brands and their location if there are any marks or brands.

(b) The name and address of the person from whom the slaughterer purchased or acquired the livestock if acquired for slaughter for himself, and the name and address of the person for whom slaughtered, if not for himself.

(c) If the livestock is delivered to the slaughterer's pens or place of business by someone other than the slaughterer or his agent, the name and address of the individual delivering the livestock and the make and model and the highway registration number of the vehicle or vehicles in which delivered.

(d) The date of delivery to the slaughterer.

The record must be prepared and made available for public inspection within twenty-four (24) hours after the slaughterer receives the livestock. It must be preserved for at least one (1) year and must be open to public inspection at all reasonable hours. Both the slaughterer and the individual having management of the slaughtering operations shall be responsible for maintenance of the records required by this Act and shall be liable for a failure to keep such records.

Sec. 3. Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200).

Sec. 4. This Act is cumulative of all other laws and does not repeal any existing statute.

Sec. [5]. The Texas Animal Health Commission shall cause to be disseminated the provisions of this Article to those persons concerned and shall carry out occasional spot checks of places maintained by slaughterers to ascertain that the provisions of this Act are complied with.

[Acts 1955, 54th Leg., p. 800, ch. 291; Acts 1961, 51st Leg., 1st C.S., p. 200, ch. 60, § 1; Acts 1961, 51st Leg., 1st C.S., p. 200, ch. 60, § 2.]

#### Art. 6908f-1. Butchering Unmarked or Unbranded Animals

If any butcher or other person engaged in the slaughter of animals shall kill or cause to be killed any unmarked or unbranded animal for market, or shall purchase and kill or cause to be killed, any animal, without having taken a bill of sale or written transfer from the party selling the same, he shall be fined not less than fifty nor more than three hundred dollars.

[1925 P.C.]

#### Art. 6908f-2. Exceptions to Preceding Article

The preceding article shall not apply to the slaughter of any animal raised by the person slaughtering the same.

[1925 P.C.]

#### Art. 6908g. Purchasing Slaughtered Cattle Without Hide or Ears

Any person engaged in butchering or slaughtering and who shall purchase any cattle that have been slaughtered by another without the hide and ears of such animal accompanying the same, or shall purchase any animal that has been slaughtered by another when the ear mark or brand on the hide accompanying the same, when offered for sale, has been changed,

mutilated or destroyed, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

#### Art. 6909. Inspector's Record

The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the county clerk of the county in which it was inspected within thirty days after said inspection. Said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected.

[Acts 1925, S.B. 84.]

#### Art. 6909a. Inspector's Record; Penalty

The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom and when inspected, and return a copy of the same to the clerk of the county court of the county in which it was inspected within thirty days after said inspection. Any inspector or magistrate failing to keep such book or to make such report as above provided for, shall be fined not less than one nor more than twenty-five dollars.

[1925 P.C.]

#### Art. 6910. Counties Exempt

The provisions of the two preceding articles shall not apply to the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, DeWitt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimball, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood.

[Acts 1925, S.B. 84.]

#### Art. 6910a. Counties Exempt

The counties exempt from the provisions of the five (5) preceding Articles<sup>1</sup> shall be the counties now or hereafter exempted by the Statutes of this State; provided that the Counties of Angelina, Tyler, Jasper and Newton shall not be exempt from the provisions of Articles 1445 to 1455, both inclusive.<sup>2</sup>

[1925 P.C.; Acts 1933, 43rd Leg., Spec.Laws, p. 121, ch. 93.]

<sup>1</sup> Articles 6908a, 6908c, 6908g, 6908d, 6909a.

<sup>2</sup> Articles 6905a, 6908f-1, 6908f-2, 6904a, 6908a to 6908d, 6908g, 6909a.

## CHAPTER FOUR. ESTRAYS

## Article

- 6911. Who May Take Up.
- 6912. Appraisalment and Bond.
- 6913. Proof of Ownership.
- 6914. No Pay for Taker-up.
- 6915. Commissioner to Return.
- 6916. Advertisement.
- 6917. Property in Estrays.
- 6918. Sale Day.
- 6919. Other Estrays.
- 6920. Returns of Sales.
- 6921. Taker-up Liable.
- 6922. Taker-up May Veneer.
- 6923. If Estray Dies.
- 6924. Proceeds of Sale.
- 6925. If Taker-up Refuse to Deliver.
- 6926. Owner May Reclaim Money.
- 6927. Notice of Estray.

**Art. 6911. Who May Take Up**

When any stray horse, mare, gelding, filly, colt, mule, jack, jennet, or work ox shall be found on the land of any citizen or his lessee for one year or more, such citizen or his lessee may forthwith advertise the same, describing the animal's color and specifying the marks and brands, if any, also giving the age and flesh marks of every kind, at three public places in the county in which he resides, one of which notices shall be at the courthouse door, for at least twenty days, and shall also deliver to the county clerk a copy of said notice which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, the taker-up of said animal or animals shall appear before some justice of the peace in said county and estray the same. No animal so taken up shall be used for any purpose until the party shall have given bond as required by the succeeding article.

[Acts 1925, S.B. 84.]

**Art. 6912. Appraisalment and Bond**

Any citizen so entitled to estray any animal shall make affidavit before said justice of the peace that the animal which he proposes to estray was taken upon his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; whereupon the said justice shall file said affidavit and shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify under oath attested by said justice the valuation, together with a particular description of the animal, including height, marks, brands, color and age. Said justice shall thereupon require of the taker-up a bond with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and ap-

praisement shall be sent by such justice to the county clerk within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. Said clerk shall record said papers so sent to him in a separate book to be kept for that purpose, for which he shall be entitled to collect the same fees allowed by law for similar services to be paid in all cases by the taker-up. When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and said justice and said clerk shall receive no more fees including posting and advertising, than for one such animal.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6913. Proof of Ownership**

At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any such estray to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, height, color and age of the same. This affidavit shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such affidavit and the payment of all costs incurred in posting such estray to the taker-up, such owner shall be entitled to demand and receive the animal. When the respectability of said witness is not known to the officer administering the oath, the party claiming the estray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6914. No Pay for Taker-up**

If the owner of any animal which has been so duly estrayed, be a resident citizen of the county in which it has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in

the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal.

[Acts 1925, S.B. 84.]

#### Art. 6915. Commissioner to Return

If any estrays of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, any county commissioner shall return the same, with a full description thereof, to the county clerk of his county, who shall advertise the same as specified in this chapter. If such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animals and report the sale thereof to said county clerk, and after paying the clerk's fee and retaining twenty per cent of the proceeds of such sale, he shall pay the remaining sum into the county treasury.

[Acts 1925, S.B. 84.]

#### Art. 6916. Advertisement

The county clerk shall cause a statement of the appraisalment and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if none, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the courthouse door thereof. The printer of such notice shall furnish the said clerk with a copy of the paper containing said notice. For such publication the printer shall be entitled to receive two dollars from the party estraying the same. Said clerk shall file and preserve said copy in his office.

[Acts 1925, S.B. 84.]

#### Art. 6917. Property in Estrays

The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisalment shall be deemed vested in the county wherein such stray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the courthouse door of the county, after giving notice of the same as required in the case of sheriff's sale. Within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use. Whenever a sale of an stray shall be made according to the provisions of this article, the taker-up shall make a return of such sale, duly sworn to by him, to the county clerk of the

county in which the sale was made, who shall file the same in his office.

[Acts 1925, S.B. 84.]

#### Art. 6918. Sale Day

All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets, or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day.

[Acts 1925, S.B. 84.]

#### Art. 6919. Other Estrays

Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisalment, shall proceed to give notice as in the case of sheriff's or constable's sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. No animal enumerated in this article except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an stray for at least four months previous to the time of estraying the same.

[Acts 1925, S.B. 84.]

#### Art. 6920. Returns of Sales

In making the returns of sales under this chapter, when the sale has been made at the residence of the taker-up or other place than at the courthouse door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family.

[Acts 1925, S.B. 84.]

#### Art. 6921. Taker-up Liable

If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured.

[Acts 1925, S.B. 84.]

#### Art. 6922. Taker-up May Use

The taker-up of an stray may use the same in moderation, after having executed bond as provided in this chapter, but should he abuse or injure the same, he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

[Acts 1925, S.B. 84.]

#### Art. 6923. If Stray Dies

Whenever an stray animal shall be found dead, or shall escape, the taker-up shall with-

out delay, make a written sworn report thereof to the county clerk; which report shall be recorded by said clerk in a book to be kept by him for that purpose. Any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 6924. Proceeds of Sale**

All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county.

[Acts 1925, S.B. 84.]

**Art. 6925. If Taker-up Refuse to Deliver**

If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the provisions of this chapter, such owner shall be entitled to action therefor with damages.

[Acts 1925, S.B. 84.]

**Art. 6926. Owner May Reclaim Money**

At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto.

[Acts 1925, S.B. 84.]

**Art. 6927. Notice of Estray**

Whenever any person shall stray any animal on which any county brand may be found, the county clerk of the county in which said estray may be shall immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and the county clerk of said county brand shall record said notice in a book kept for that purpose, and post the same on the courthouse door; and shall ascertain from his record of brands to whom said animal may belong, and notify said owner by letter or otherwise. For such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. Any county clerk who shall fail to

send a notice as required by this article, shall become liable to the original owner of said estray in an amount equal to the value of said estray.

[Acts 1925, S.B. 84.]

**Repeals**

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

**CHAPTER FIVE. STOCK LAW AND LIMITED RANGE**

**1. GENERAL PROVISIONS**

**Article**

- 6928. General Provisions.
- 6929. Combined Elections.

**2. STOCK LAW ELECTIONS**

- 6930. To Order Election.
- 6931. Territory Between Subdivisions.
- 6932. Requisites of Petition.
- 6933. Election Ordered.
- 6934. Order and Notice.
- 6935. Manner of Voting.
- 6936. Returns of Election.
- 6937. Proclamation of Result.
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- 6943. Stock Not to be Injured.
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**3. FREE RANGE ELECTIONS**

- 6947. Limited Free Range.
- 6948. Order by Court.
- 6949. Order by Judge.
- 6950. Ballots.
- 6951. Returns.
- 6952. Declaration of Result.
- 6953. Second Election.

**1. GENERAL PROVISIONS**

**Art. 6928. General Provisions**

The following rules shall govern any election held under any provision of this chapter for either of the purposes named in this chapter:

1. If the election be for a subdivision of the county, the county judge, at the time he issues the order for such election, shall appoint proper persons as managers of said election, all of whom shall be free-

holders of the county and qualified voters; and such managers may appoint their own clerks.

2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.

3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.

4. On or before the tenth day after any said election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against the proposition or propositions submitted at said election.

[Acts 1925, S.B. 84.]

#### Art. 6929. Combined Elections

When an election is called for any county or subdivision thereof for the purpose of voting upon the question of the adoption of the stock law or any part thereof, under the provisions of this chapter, if such county or subdivision has not already in operation the stock law or any part thereof under the provisions of this chapter, it shall be lawful to submit at the same time and at the same election the question of the limited period of free range for hogs, as provided for in this chapter, but said proposition must be submitted and voted upon as a separate proposition, and the votes cast therein and the returns thereof, and the judge's proclamation thereon, must be separate and distinct from that of the stock law proposition voted on at such election.

[Acts 1925, S.B. 84.]

## 2. STOCK LAW ELECTIONS

#### Art. 6930. To Order Election

Upon the written petition of fifty (50) freeholders of any county, or upon the petition of twenty (20) freeholders of any subdivision of a county, the Commissioners Court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether any one or more of the following classes of animals, to wit: horses, mules, jacks, jennets, donkeys, hogs, sheep, and goats, shall be permitted to run at large in such county or subdivision.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 789, ch. 318, § 1.]

#### Art. 6931. Territory Between Subdivisions

Whenever there is territory between two (2) subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, in

a county, or in an adjoining county, and in such territory there are less than fifty (50) freeholders, an election shall be ordered on a petition of a majority of the freeholders residing in such territory by the Commissioners Court of the County in which the territory lies, and the election shall be held as provided by law in other cases relating to the adoption of the stock law. If there be less than twenty (20) freeholders in such intervening or adjoining territory, then on petition of a majority of the owners of the land to said Commissioners Court, the said Commissioners Court shall issue an order extending the stock law to said territory and the same shall be included in the territory of such adjoining subdivision; in cases where there are no freeholders on such intervening or adjoining territory, then on the petition of the owner or owners of the land to said Commissioners Court, the said Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own lands adjoining any other lands which have been added to territory in which a stock law prevails, shall have the same right, and on petition of the owner or owners of such lands to the said Court, the said Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 530, ch. 318, § 1.]

#### Art. 6932. Requisites of Petition

Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated.

[Acts 1925, S.B. 84.]

#### Art. 6933. Election Ordered

Upon the filing of such petition, the commissioners court, at its next regular term thereafter, shall order an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order.

[Acts 1925, S.B. 84.]

#### Art. 6934. Order and Notice

Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county; but if no newspaper be published in the county, then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if the election be or-

dered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened.

[Acts 1925, S.B. 84.]

#### Art. 6935. Manner of Voting

All votes at such election shall be by ballot, and all ballots shall have printed thereon the words, "For letting \_\_\_\_\_ run at large" and "Against letting \_\_\_\_\_ run at large". In the blank spaces there shall be printed the name of the animal or animals designated in the order. There shall be printed just above the propositions to be voted on, this instruction note: "Scratch or mark out one statement so that the one remaining shall indicate the way you wish to vote". The voters shall mark their ballots and the votes shall be counted in accordance with this instruction note.

[Acts 1925, S.B. 84; Acts 1955, 54th Leg., p. 665, ch. 236, § 1.]

#### Art. 6936. Returns of Election

The returns shall be opened, tabulated and counted by the commissioners court of the county in the same manner as provided for all general elections in this State.

[Acts 1925, S.B. 84.]

#### Art. 6937. Proclamation of Result

If a majority of the votes cast at such election shall be against letting such animals run at large, the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the court house door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation.

[Acts 1925, S.B. 84; Acts 1955, 54th Leg., p. 665, ch. 236, § 2.]

#### Art. 6938. Stock Impounded

If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land of any person, other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this subdivision have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. No animals shall be impounded unless they

have entered upon the inclosed lands or shall be found roaming about the residence, lots, or cultivated land of another; and whenever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages.

[Acts 1925, S.B. 84.]

#### Art. 6939. Fees and Damages

Any owner, lessee, or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day per head for sheep. The damages done by such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make such appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this law has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with said justice, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice there-of shall be posted in two public places in said subdivision, and one at the door of the courthouse of the county; and provided, further, that nothing in this law shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this law. After the filing of the assessment, as provided for in this article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale as in constable's sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensa-

tion as is allowed for like services in civil cases.

[Acts 1925, S.B. 84.]

#### Art. 6940. Stock Sold

If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the county clerk, and pay the same over to the county treasurer, to be received and disbursed by him, as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, stray such stock, according to the laws regulating estrays in this State.

[Acts 1925, S.B. 84.]

#### Art. 6941. Subsequent Elections

Whenever an election is held under the provisions of this law for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county.

[Acts 1925, S.B. 84.]

#### Art. 6942. Lawful Fence

Should any stock not permitted to run at large enter any inclosure of any owner or lessee of land, entitled to the benefit of this law, without his consent, it shall be lawful for the owner or lessee of said inclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them or pickets four feet high and not more than six inches apart, shall constitute a lawful fence.

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If boards or rails are used, then three boards to be not less than five inches wide and one thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provision of this chapter shall be four feet high. Nothing in this subdivision shall prevent the freeholders of any county or subdivision of a county where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board shall constitute a lawful fence in such county or subdivision thereof; the election for such purpose to be conducted in the same manner and under the same rules as elections provided for in this chapter governing the passage of the stock law.

[Acts 1925, S.B. 84.]

#### Art. 6942a. Misuse of Grazing Land Under One Fence; Injunction

Sec. 1. That, where one owner or lessee holds a separate tract or tracts of grazing or pasture land adjoining or adjacent to a tract or tracts of similar land held by another owner or lessee, fenced under one fence or enclosure surrounding said tracts, separately owned or leased, or enclosed with natural barriers and fences, it shall be unlawful for either owner or lessee of any such tract, or tracts, so enclosed, desiring to pasture the tract or tracts owned or leased by him, to place or keep, or cause to be placed or kept in said general enclosure, more cattle or other livestock than the tract, or tracts, owned or leased by him will reasonably pasture. Any one owning or leasing such land within said general enclosure injured by any other owner or lessee placing or keeping in said general enclosure, more cattle, or other livestock than the land owned or leased by him separately will reasonably pasture, may recover his damages by suit against the person excessively grazing said land or placing excess cattle and other livestock in such general enclosure, and shall have a lien upon the livestock of said person thus offending until said damages and all costs recovered are fully paid. It shall be unlawful for any person to place, or cause to be placed in said general enclosure, cattle or other livestock, unless he has a sufficient permanent supply of water on the land owned or leased by him in such general enclosure for such cattle or livestock; and the placing or causing to be placed in such general enclosure cattle or other livestock by any person holding or leasing land in such general enclosure but not having a sufficient permanent supply of water on the land owned or leased by him shall be deemed guilty of intentional and willful fraud and also subject to said full civil damages.

Sec. 1-a. The words "reasonably pasture" used in the foregoing Section are hereby interpreted to mean: "that number of livestock that a prudent and experienced livestock raiser is accustomed to graze on a range similar to the enclosure referred to in said Section 1 above and that such enclosure will supply ample

grazing to, under the usual condition of such community wherein such enclosure is located."

Sec. 1-b. The words "owner" or "lessee" used in the foregoing Sections shall be interpreted to mean: "owner or lessee as shown by deed, lease or other written instrument of record in the county clerk's office in the county where the land claimed to be owned or leased is located."

Sec. 2. Any person who shall willfully violate any provision of the preceding Article shall be fined not less than Ten Dollars (\$10) nor more than Five Hundred Dollars (\$500), or imprisoned in the County Jail not exceeding six (6) months, or by both such fine and imprisonment, and each animal placed in the general enclosure referred to in the preceding Article in violation of the terms thereof, for each day or part of a day, shall constitute a separate offense.

Sec. 2-a. Any person entitled to recover damages by suit under the provisions of Section 1 of this Act, or any person in whose favor a suit for damages may lie under the provisions thereof, shall, in addition to all other relief and remedies provided for in said Section, be entitled to an injunction in the proper court against any person or persons violating any of the provisions of this Act, upon proper showing and proof, enjoining the further violation or threatened violation of said provisions.

[Acts 1935, 44th Leg., p. 721, ch. 313; Acts 1945, 49th Leg., p. 544, ch. 330, § 1; Acts 1953, 53rd Leg., p. 399, ch. 112, § 1.]

#### Art. 6943. Stock Not to be Injured

If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise maim, wound or kill any cattle, or any horse, mule, jack or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, such person may complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages have been sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second

trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this law to charge twenty-five cents per day per head for impounding such stock as referred to in this law.

[Acts 1925, S.B. 84.]

#### Art. 6944. No Election Within Two Years

After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this law has been held therein; but at the expiration of that time the commissioners court of each county in the State, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in said county or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this law for a first election.

[Acts 1925, S.B. 84.]

#### Art. 6945. Proclamation Issued

If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be "Against the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be "For the stock law," he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election.

[Acts 1925, S.B. 84.]

#### Art. 6946. Elections Validated

All elections held in any county in this State for the purpose of determining whether or not hogs, sheep, or goats shall be permitted to run at large in such county or subdivision as provided in this chapter, wherein the petition was filed, orders of the election made by the com-

missioners court, notice thereof given, such election held and a majority of the freeholders voting at such election, voted in favor of the same, and such election may have been invalidated by the failure of some ministerial officer to perform the duties required of him, the same is hereby in all things validated, and shall be by each court of this State held to be valid elections just the same as if the officers charged with the duty of opening, tabulating and counting the votes, had complied with the law, as provided in this chapter.

[Acts 1925, S.B. 84.]

#### Art. 6946a. Local Option "Hog Law"

Whoever shall wilfully turn out or cause to be turned out on land not his own or under his control or wilfully fail or refuse to keep up any stock, prohibited by law from running at large in any county or subdivision of any county in which the stock law has been adopted, or wilfully allow such stock to trespass upon the land of another in such county or subdivision thereof, or wilfully permit to run at large any stock of his own, or of which he is the agent or of which he has the control, and not permitted to run at large in any county or subdivision of any county in which the stock law has been adopted, shall be fined not less than five nor more than fifty dollars.

[1925 P.C.]

#### Art. 6946b. Local Option "Horse Law"

Whoever shall knowingly permit any horses, mules, jacks, jennets, or cattle to run at large in any territory in this State where the provisions of the laws of this State have been adopted prohibiting any of such animals from running at large shall be fined not less than Five Dollars (\$5) nor more than Two Hundred Dollars (\$200).

[1925 P.C.; Acts 1949, 51st Leg., p. 356, ch. 180, § 1.]

### 3. FREE RANGE ELECTIONS

#### Art. 6947. Limited Free Range

Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of any county, which county or subdivision has heretofore adopted, or may hereafter adopt, the hog law under the provisions of this chapter the commissioners court of such county shall order an election to be held in said county or subdivision on some day named in the order for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs shall have a free range in said county or subdivision from the fifteenth day of November to the fifteenth day of February, of each year. Whenever there is territory between two subdivisions of a county which have adopted the hog law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held for the purpose named herein. If the petition be from

the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated in the same manner as when originally established.

[Acts 1925, S.B. 84.]

#### Art. 6948. Order by Court

Upon the filing of such petition, the commissioners court, at a regular or special meeting thereof, shall order an election to be held throughout the county or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns made in accordance with the laws regulating general elections, in so far as the same are applicable.

[Acts 1925, S.B. 84.]

#### Art. 6949. Order by Judge

Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if such election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall have the limited period of free range.
3. The time in which said animals are to have the limited period of free range.
4. The territorial limits to be affected.
5. The day of election.
6. The places at which polls are to be opened.

[Acts 1925, S.B. 84.]

#### Art. 6950. Ballots

All votes at an election held under the provisions of this Act, shall be by ballot; and voters desiring to permit hogs to have a limited period of free range in hog law counties or districts as designated in the order, shall place upon their ballots the words, "For the limited period of free range for hogs," and those against the limited period of free range for hogs shall place upon their ballots the words, "Against the limited period of free range for hogs."

[Acts 1925, S.B. 84.]

#### Art. 6951. Returns

The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the

peace of the county, or two respectable freeholders of the county.

[Acts 1925, S.B. 84.]

**Art. 6952. Declaration of Result**

If a majority of the votes cast at such election shall be "For the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be lawful to permit hogs to run at large within the limits designated for the period of time between the fifteenth day of November of each year and the fifteenth day of the following February of each year, both days inclusive.

[Acts 1925, S.B. 84.]

**Art. 6953. Second Election**

Whenever an election is held under the provisions of this law for any county or subdivision, no other election for such purpose shall be held within such county or subdivision for the space of two (2) years, but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, and, provided that, if the proposition has been defeated for any subdivision of any such county, no other election shall be held thereafter covering or including said territory except an election held in the same locality or subdivision after the lapse of twelve (12) months from the date of said defeat for said subdivision or locality. If, in a county or subdivision which has formerly adopted the limited period of free range for hogs, as provided for under the terms of this law, a majority of the legal votes cast at such election shall be "Against the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten (10) days from its issuance, it shall be unlawful to permit hogs to run at large within the limits designated; if a majority of the legal votes cast at such election shall be "For the limited period of free range for hogs," he shall so state in his proclamation, and the operation of the law shall in no way be affected by such election.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 269, ch. 197, § 1.]

**CHAPTER SIX. STOCK RUNNING AT LARGE**

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- 6971. Lawful Fence.
- 6971a. Animals Running at Large on State Highways; Enforcement Notwithstanding Other Laws.

**Art. 6954. Petition**

Upon the written petition of thirty-five (35) freeholders of any of the following counties: Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kleberg, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Nacogdoches, Navarro, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Trinity, Upshur, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Young, Zapata, and Zavala; or upon the petition of fifteen (15) freeholders of any such subdivision of any county of this State as may be described in the petition, and defined by the Commissioners Court of the county in which said subdivision is situated, the Commissioners Court of said county shall order an election to be held in such county or such subdivision of a

county as may be described in the petition and defined by the Commissioners Court on the day named in the order for the purpose of enabling the freeholders of such county or subdivision of a county as may be described in the petition and defined by the Commissioners Court to determine whether cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the Commissioners Court.

[Acts 1925, S.B. 84; Acts 1926, 39th Leg., 1st C.S., p. 17, ch. 11, § 1; Acts 1927, 40th Leg., p. 363, ch. 245, § 1; Acts 1929, 41st Leg., p. 9, ch. 5, § 1; Acts 1929, 41st Leg., 1st C.S., p. 183, ch. 71, § 1; Acts 1929, 41st Leg., 3rd C.S., p. 240, ch. 8, § 1; Acts 1930, 41st Leg., 4th C.S., p. 25, ch. 15; Acts 1931, 42nd Leg., p. 781, ch. 313; Acts 1932, 42nd Leg., 3rd C.S., p. 10, ch. 9, § 1; Acts 1933, 43rd Leg., Spec.Laws, p. 57, ch. 48, § 1; Acts 1935, 44th Leg., Spec.Laws, p. 1199, ch. 34, § 1; Acts 1937, 45th Leg., p. 382, ch. 189, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1916, ch. 35, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 947, § 1; Acts 1943, 48th Leg., p. 115, ch. 85, § 1; Acts 1947, 50th Leg., p. 1024, ch. 439, § 1; Acts 1949, 51st Leg., p. 726, ch. 390, § 1; Acts 1949, 51st Leg., p. 907, ch. 486, § 1; Acts 1953, 53rd Leg., p. 789, ch. 318, § 2; Acts 1954, 53rd Leg., 1st C.S., p. 65, ch. 26, § 1; Acts 1955, 54th Leg., p. 805, ch. 296, § 1; Acts 1957, 55th Leg., p. 355, ch. 165, § 1; Acts 1959, 56th Leg., p. 943, ch. 438, § 1; Acts 1971, 62nd Leg., p. 1590, ch. 433, § 1; Acts 1971, 62nd Leg., p. 2679, ch. 876, § 1, eff. June 9, 1971.]

#### Art. 6954a. Election as to Domestic Turkeys Running at Large

Upon written petition of twenty-five (25) freeholders of any political subdivision of Blanco, DeWitt, Gonzales, Gillespie, Guadalupe, Parker, Wise, Clay, Collin and Bastrop Counties, the Commissioners Courts of such counties shall order an election to be held in such subdivisions, which subdivision shall be described in the petition and defined by the Commissioners Court, on the day named in the order for the purpose of enabling the freeholders of such subdivisions to determine whether domestic turkeys shall be permitted to run at large in such subdivisions of such Counties. The requisites of the petition, the order of the Court, the order of the County Judge, the election and all proceedings thereunder shall be the same as prescribed in Articles 6957 to 6971, inclusive, of the Revised Civil Statutes of Texas, 1925, Title 121, Chapter 6, and all provisions and revisions thereof, relative to stock running at large, the impounding thereof, and the penalty therefor shall be applicable to domestic turkeys running at large in the event any such subdivision of said counties shall by election prohibit the running at large of domestic turkeys by a vote as in such Statutes provided; provided that the fees for impounding domestic turkeys shall be ten cents (10¢) per day for each domestic turkey so impounded.

[Acts 1935, 44th Leg., Spec.Laws, p. 1174, ch. 10, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 946, § 1; Acts 1941, 47th Leg., p. 243, ch. 171, § 1; Acts 1945, 49th Leg., p. 153, ch. 104, § 1.]

#### Art. 6955. Exceptions

The provisions of the preceding article shall not apply as a whole to Wharton County but shall apply only to such subdivision thereof as may be designated in the manner herein pro-

vided; provided, however, that the provisions of this Act shall not apply to Jefferson County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Hudspeth County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided; provided, however, that the provisions of the preceding article shall not apply to Culberson County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 28, ch. 17, § 1.]

#### Art. 6956. Intervening Territory

Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law.

[Acts 1925, S.B. 84.]

#### Art. 6957. Requisites of Petition

Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated.

[Acts 1925, S.B. 84.]

#### Art. 6958. Order of Court

Upon the filing of such petition, the commissioners court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable.

[Acts 1925, S.B. 84.]

#### Art. 6959. Order by Judge

Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the courthouse door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three

public places in the subdivision, if the election be ordered for a subdivision. Said order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened.

[Acts 1925, S.B. 84.]

**Art. 6960. Election**

The following rules shall govern any election held under any provision of this chapter:

1. If the election be for a subdivision of the county the county judge, at the time he issues the order for such election shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.
2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.
3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.
4. All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words "For the stock law," and those in favor of allowing animals to run at large shall place upon their ballots the words, "Against the stock law."
5. On or before the tenth day after any such election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against said proposition submitted at said election.

[Acts 1925, S.B. 84.]

**Art. 6961. Effect of Election**

The returns shall be opened tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or of two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners court in the said county. The order showing the result of said election this<sup>1</sup> determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action

of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Probably should read "thus."

**Art. 6962. Proclamation**

If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the courthouse door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation.

[Acts 1925, S.B. 84.]

**Art. 6963. Election to Repeal Law**

Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, except by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6964. Second Election**

Whenever an election is held under the provisions of this Chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve (12) months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, and provided that, if the proposition has been defeated for any subdivision of any such county, no other election shall be held thereafter covering or including said territory except an election held in the same locality or subdivision after the lapse of twelve (12) months from the date of said defeat for said subdivision or locality.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 270, ch. 198, § 1.]

**Art. 6965. Duty of Officers**

It shall be the duty of any sheriff or constable of any county, or subdivision thereof,

within this State, where the provisions of this Chapter are or may hereafter become operative, to seize any stock which may become known to him to be running at large on any outside premises where the provisions of the stock law are in force, and impound the same in some place provided for that purpose, and immediately notify the owner thereof, if such owner is known to such officer, who may redeem the same on the payment of an impounding fee of One Dollar (\$1) per head, and the following additional fee for each day such stock is so kept: One Dollar (\$1) per day per head for horses, mules, and cattle; fifty cents (50¢) per day per head for jacks and jennets; and twenty-five cents (25¢) per day per head for sheep, goats, and swine; provided that in any county having a population of not less than twenty-four thousand five hundred (24,500) nor more than twenty-four thousand seven hundred (24,700), according to the last preceding federal census, the additional fee shall not exceed Five Dollars (\$5) per day per head for swine.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 817, ch. 329, § 1; Acts 1961, 57th Leg., p. 278, ch. 152, § 1, eff. May 15, 1961; Acts 1971, 62nd Leg., p. 1843, ch. 542, § 105, eff. Sept. 1, 1971.]

#### Art. 6966. May Impound

If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in this chapter, the owner, lessee, or person in lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him; provided that no animals shall be impounded except as provided in the preceding article, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages.

[Acts 1925, S.B. 84.]

#### Art. 6967. Fees for Impounding

Any owner, lessee or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to wit: fifty cents (50¢) per day per head for horses and mules; thirty-five cents (35¢) per day per head for cattle; thirty cents (30¢) per day per head for jacks and jennets; twenty-five cents (25¢) per day per head for swine; and fifteen cents (15¢) per day per head for sheep and goats; provided that in any county having a population of not less than twenty-four thousand five hundred (24,500) nor more than twenty-four thousand seven hundred (24,700), according to the last preceding federal census, the additional impounding fee shall

not exceed Five Dollars (\$5) per day per head for swine. The damages done by such stock, if any, and the fees due to the taker-up of such stock, if any, may be assessed by any three (3) disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the County Judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this Chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two (2) of them, and verified by the affidavit of said freeholders to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five (5) days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two (2) public places in said subdivision and one (1) at the courthouse door of the county.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 817, ch. 329, § 2; Acts 1961, 57th Leg., p. 278, ch. 152, § 2, eff. May 15, 1961; Acts 1971, 62nd Leg., p. 1843, ch. 542, § 105, eff. Sept. 1, 1971.]

#### Art. 6968. Sale of Impounded Stock

After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases.

[Acts 1925, S.B. 84.]

#### Art. 6969. Sale if Not Redeemed

When any stock shall have been impounded as provided in the third preceding article, and after five days' notice has been given to the owner of such stock, such officer shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance,

if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases.

[Acts 1925, S.B. 84.]

**Art. 6970. Unknown Owners**

If no owner can be found of stock so impounded, such officer or other person taking up any such stock shall make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to the affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such affidavit, the constable of the precinct shall sell such stock as in case when the owner is known; and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court and pay the same over to the county treasurer to be received by him and placed to the credit of the road and bridge fund of the county.

[Acts 1925, S.B. 84.]

**Art. 6971. Lawful Fence**

After the adoption of the stock law in any county, or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6971a. Animals Running at Large on State Highways; Enforcement Notwithstanding Other Laws**

Sec. 1. Any person owning or having responsibility for the control of any horse, mule, donkey, cow, bull, steer, hog, sheep, or goat, who knowingly permits such animal to traverse or roam at large, unattended, only on the right-of-way of any U.S. Highway, or State Highway in this state but not including numbered farm-to-market roads, shall be guilty of a misdemeanor, and shall be fined in any sum not exceeding Two Hundred Dollars (\$200.00). Each day that an animal is permitted to roam at large in violation hereof shall constitute a separate offense.

Sec. 2. No civil cause of action for damage shall lie against any person, firm or corporation operating a vehicle on a designated highway in this state by reason of such vehicle's striking, killing, injuring or damaging any unattended animal running at large on a designated highway, except upon a finding of gross negligence in the operation of said vehicle or wilful intent to strike, kill, injure or damage such animal.

Sec. 3. This Act shall not prevent the movement of livestock from one location to another location by herding the livestock on, along or across the highway, or leading or

driving the livestock on, along or across the highway.

Sec. 4. In addition to the penalty provided in Section 1 of this Act, any peace officer may authorize in writing any holder of a permit issued by the Railroad Commission granting authority to haul livestock, to pick up any livestock found unattended upon a designated highway to which this Act applies if the officer, after diligent inquiry, has been unable to locate the owner or persons responsible for the livestock. The livestock so picked up shall be delivered to the sheriff or any constable of the county where found. The sheriff or constable so receiving livestock shall make disposition of the livestock as provided in Title 121, Chapter 6, Revised Civil Statutes of Texas, 1925, which provides for the proper disposition of livestock running at large in certain counties, including, but not limited to, the authorization of impounding fees.

Sec. 5. The State Highway Patrolmen, as well as county and local enforcement officers, shall have the power and authority, and it shall be their duty to enforce all the provisions of this Act. The State Highway Patrolmen, sheriff, constable, or other enforcement officer, is authorized to carry out the enforcement of this Act without the use of a written warrant. Notwithstanding the provisions of Articles 6928 to 6971, inclusive, of the Revised Civil Statutes of 1925, or any amendments thereto, or any other laws heretofore enacted authorizing or permitting livestock to run at large on public roads, and notwithstanding the results of any elections heretofore, or hereafter held in accordance therewith, this Act shall be controlling in all cases wherein it conflicts with the above-mentioned statutes or any action taken thereunder, provided, however, that this Act shall not take effect until July 1, 1960.

[Acts 1935, 44th Leg., p. 467, ch. 186; Acts 1959, 56th Leg., p. 835, ch. 374, § 1.]

**Savings Clause**

*Acts 1971, 62nd Leg., p. 2680, ch. 876, which by section 1 amends article 6954 providing a list of counties that may petition the commissioners court for an election to determine whether cattle should be permitted to run at large in the county or subdivision thereof, in section 2 provides: "This Act does not affect the operation of Chapter 186, Acts of the 44th Legislature, Regular Session, 1935, as amended (Article 1370a, Vernon's Texas Penal Code) [now, this article]."*

**CHAPTER SEVEN. PROTECTION OF STOCK RAISERS**

- Article 6972. Inspector.
- 6973. Bond.
- 6974. Seal of Office.
- 6975. Deputies.
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## Article

- 6978. Inspections and Record.
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- 7008. Fees of Inspectors; Act Inapplicable to Certain Counties.
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**Art. 6972. Inspector**

Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals" shall be elected by the qualified voters of such county, and in each unorganized county the Governor shall appoint such inspector. The word, "inspector," as used in this title, shall mean the inspector of hides and animals. Such inspectors shall hold their office for the term of two years. Until any vacancy in such office is filled by appointment, the sheriff of the county shall discharge the duties of the office. [Acts 1925, S.B. 84.]

**Art. 6973. Bond**

Each person elected to the office of inspector, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the commissioners court of the county constituting his district, payable to the county judge, in a sum to be fixed by said court, not less than one thousand nor more than ten thousand dollars, conditioned that he shall well and truly perform the duties of his office. A sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector ad interim.

[Acts 1925, S.B. 84.]

**Art. 6974. Seal of Office**

Each commissioners court shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of hides and animals, \_\_\_\_\_ county, Texas" (the blank to be filled with the name of the county), and each inspector and his deputy shall certify their official acts with the impress of such seal. The inspector upon retiring from office shall deliver such seal, together with the books, papers and records of his office to his successor.

[Acts 1925, S.B. 84.]

**Art. 6975. Deputies**

Every inspector shall have power to appoint in writing and under his seal as many deputies as shall be necessary to perform the duties imposed on them by this chapter. The inspector shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall take and subscribe the official oath. The inspectors shall be responsible to any person injured thereby for the official acts of each of their deputies and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties.

[Acts 1925, S.B. 84.]

**Art. 6976. Definitions**

As used in this chapter, the words "deputy inspector" shall mean the "deputy inspector of hides and animals," and the words "county," "district," or "inspection district," shall include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county.

[Acts 1925, S.B. 84.]

**Art. 6977. Take Acknowledgments**

Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal, and shall be allowed to

collect fifty cents for every acknowledgment so taken.

[Acts 1925, S.B. 84.]

#### Art. 6978. Inspections and Record

The inspector, in person or by deputy, shall faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor and of the purchaser thereof. He shall return a certified copy of all entries made in such record during each month to the county clerk on the last day of each month, which report shall be filed among the records of the county court.

[Acts 1925, S.B. 84.]

#### Art. 6978a. Inspector Failing to Examine Hides, etc.

If any inspector or deputy inspector of hides and animals shall knowingly fail or refuse to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, he shall be fined not less than twenty-five nor more than two hundred dollars.

[1925 P.C.]

#### Art. 6978b. Inspector Failing to Keep Record

Any inspector of hides and animals who shall fail to provide and keep a well bound book and record therein a correct statement, showing the number, ages, and marks and brands of each animal inspected by him or by his deputy, and the number and all the marks and brands of all hides inspected by him or by his deputy, and whether the hides are dry or green, and the names of the vendors and purchasers of said animals or hides, shall be fined not less than fifty nor more than three hundred dollars.

[1925 P.C.]

#### Art. 6978c. Certificate by Inspector

Any inspector or deputy inspector of hides and animals who shall fail to correctly state in his certificate of inspection or in his certificate of acknowledgment all the marks and brands of all animals and hides inspected by him shall be fined not less than twenty-five nor more than three hundred dollars.

[1925 P.C.]

#### Art. 6978d. Return of Certified Copies, etc.

Any inspector of hides and animals who shall fail to return a certified copy of all entries made in his record during each month to

the county clerk of his county on the last day of each month shall be fined not less than fifty nor more than three hundred dollars.

[1925 P.C.]

#### Art. 6979. Exemption From Inspection

The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned as provided in the preceding articles.

[Acts 1925, S.B. 84.]

#### Art. 6980. Shall Not Certify

No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands cannot be ascertained, and he shall prevent the same from being taken or shipped out of the county unless they are identified by proof or by a duly acknowledged bill of sale signed by the owner of such hides or animals.

[Acts 1925, S.B. 84.]

#### Art. 6981. Seizure

Every inspector may seize and sequester all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mother thereof, or are identified by the presentation of a bill of sale from the person proven to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this State. Every inspector may seize and sequester all unbranded animals or hides, and animals and hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in this article.

[Acts 1925, S.B. 84.]

#### Art. 6982. Procedure as to Seizure

When an inspector has seized any hides or animals as provided for in the preceding article, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts; and said judge or justice shall issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property with a description of the same, commanding them to appear at a day named in said citation to show cause why said property should not be forfeited to the county wherein the same was seized, and sold for the benefit of said county. Said citation shall be directed to the sheriff or to any constable of said county, who shall cause certified copies of the same to be posted in three

public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, said judge or justice issuing said citation shall proceed to condemn the property mentioned in said citation, unless satisfactory proof shall be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned. In case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county.

[Acts 1925, S.B. 84.]

#### Art. 6983. Bill of Sale Taken

Each person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive the same for slaughter, shall, at the time of purchasing and before driving the same, procure a written bill of sale from the owner or owners thereof, or from his or their legally authorized agent. Said bill of sale shall be properly signed and acknowledged. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all marks and brands discernable thereon; and said animals before leaving the county in which they have been gathered shall be inspected by the inspector of such county or his deputy.

[Acts 1925, S.B. 84.]

#### Art. 6983a. Driving Stock Out of County Without Owner's Consent

Whoever drives any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article.<sup>1</sup>

[1925 P.C.]

<sup>1</sup> Article 6986a.

#### Art. 6983b. Permits for Transporting Livestock

Any person who is the driver of any truck, automobile or other vehicle containing any livestock or domestic fowl which is upon or being driven upon any land of which said driver is not owner, lessee, renter or tenant, or which is upon or being driven upon any highway, public street or thoroughfare, who fails to have in his possession and exhibit to any person or peace officer upon demand a written permit authorizing said movement, signed by the owner or caretaker of said livestock or domestic fowl or from the owner or person in control of the land from which said driver began said movement shall be fined not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars for each head

of livestock and each domestic fowl in said movement, unless said driver upon demand of said person or peace officer makes, signs and delivers to said person or peace officer a written statement containing all the information herein required to be included in permits. Said driver shall be fined not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars for each head of livestock and each domestic fowl in said movement which is not covered by all the following information: Name of place of origin, including name of ranch or other place; point of destination including name of ranch, market center, packing house or other place; number of livestock or fowls with the description thereof, including kind, breed, color, and also marks and brands if there be any. Failure or refusal of such driver to exhibit to a person or peace officer said permit or to make said statement, shall constitute probable cause for any person or peace officer to search said truck or vehicle to ascertain if it contains any stolen livestock or stolen domestic fowls and to detain said movement a reasonable length of time to ascertain whether any stolen livestock or stolen fowls are contained therein. Any driver who has in his possession any false or forged permit or who makes any false written statements shall be fined not less than Two Hundred (\$200.00) Dollars nor more than Five Hundred (\$500.00) Dollars or he shall be imprisoned in the county jail not less than sixty (60) days nor more than six (6) months, or he shall be punished by both such fine and imprisonment. It is provided that the provisions of this Act shall also apply to slaughtered livestock and fowls and butchered portions thereof.

[Acts 1929, 41st Leg., 2nd C.S., p. 32, ch. 19, § 1.]

#### Art. 6984. In Sale of Hides

The purchaser of any hides of cattle at the time of purchasing same shall obtain from the owner thereof, or from his legally authorized agent, a written bill of sale duly acknowledged, which shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green.

[Acts 1925, S.B. 84.]

#### Art. 6984a. Purchasing Animal Without Bill of Sale

Whoever purchases any animal or hides of cattle without obtaining a bill of sale from the owner or his agent shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased.

[1925 P.C.]

#### Art. 6984b. Agent Selling Without Power of Attorney

Whoever shall as the agent of another sell any cattle without first having obtained a power of attorney from the owner duly authenticated shall be fined not less than fifty nor more than five hundred dollars.

[1925 P.C.]

**Art. 6985. Certificate of Inspection**

Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a written bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent duly authorized in writing, duly signed and acknowledged, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the law, which certificate shall not be complete until the same and the bill of sale herein provided for shall be recorded in the office of the county clerk of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser and shall protect him from the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported; provided that any person driving cattle in his own mark and brand shall be entitled to the certificate of inspection provided for herein, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the county clerk of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle.

[Acts 1925, S.B. 84.]

**Art. 6985a. Inspector Giving Fraudulent Certificate**

Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars.

[1925 P.C.]

**Art. 6986. Road Brand**

Any person who shall drive any cattle to market beyond the limits of this State shall, before removing such cattle from the county where same are gathered, place upon each animal so to be driven a large and plain road brand, composed of any device he may choose, which shall be branded on the left side of the back behind the shoulder; and each person using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county.

[Acts 1925, S.B. 84.]

**Art. 6986a. Driving Cattle Without Road-branding**

Whoever drives any cattle out of any county with the intention of driving the same beyond

the limits of the State to a market, without first having road-branded the same in accordance with law shall be fined not less than twenty nor more than one hundred dollars for each animal so driven.

[1925 P.C.]

**Art. 6987. Export to Mexico**

Any person may drive or ship any animals to Mexico from any point on the coast of Texas, or may drive or ship them across the Rio Grande River at any point where a custom house of the United States is located, but not from any other point; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated before shipment from the State or passage across said river of said animals.

[Acts 1925, S.B. 84.]

**Art. 6987a. Driving Cattle or Moving Carcasses From Mexico Into Texas or From Texas Into Mexico**

Whoever drives any cattle across the Rio Grande from Mexico into Texas, or from Texas into Mexico, at any other point than where a United States Custom House is maintained, or where there is a place of inspection by United States Custom House officers, or without first having the same inspected in accordance with law; or whoever moves the carcass, or a part of the carcass, of any cow, calf or other animal of the cattle family across the Rio Grande from Mexico into Texas, or from Texas, into Mexico, except at one of the above described places, or without first having the same inspected in accordance with law, shall upon conviction be confined in the penitentiary not less than two (2) years nor more than five (5) years.

[1925 P.C.; Acts 1951, 52nd Leg., p. 456, ch. 282, § 1.]

**Art. 6988. Herds in Transit**

Whenever a drove of cattle may be passing through any county, the inspector, if called upon to do so by any person, shall stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed above. If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle; but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance said drove was inspected.

[Acts 1925, S.B. 84.]

**Art. 6989. Hides From Mexico**

The hides of all cattle imported into this State from Mexico shall be inspected by the inspector of any county or district into which

the same may be imported. If the importer of said hides fails or refuses to place such hides in a position where the same may be inspected by said inspector, or if said hides are found by said inspector to be folded or booked in such a manner as that the same may not be inspected without injury to said hides, said inspector shall take possession of such hides and have the same treated in such manner as will enable him to unfold the same without injury thereto. Such inspector shall not be held liable for any damage which may accrue to such hides by reason of the treatment thereof for the purpose of enabling him to inspect the same, and such treatment as may be necessary to enable the inspector to unfold and inspect such hides shall be wholly at the risk of the importer or person in whose possession such hides may be found. In addition to the inspection fees allowed such inspector for the inspection of said hides, there shall be paid by the importer or the person in whose possession said hides may be found after importation, all expenses incurred by said inspector in the treatment of said hides, for the purpose of enabling him to inspect the same as herein provided, such expenses to include drayage and freight charges and all expenses for handling and treatment of said hides. If the importer or the person in whose possession said hides may be found after importation, fails or refuses to pay said expenses for retreatment, or if he fails or refuses to pay the inspection fees as required by law, the inspector may retain possession of said hides and sell a sufficient number thereof, after three days public notice, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. [Acts 1925, S.B. 84.]

#### Art. 6990. Animals Imported

Horses, mules and cattle imported from Mexico into this State shall be inspected in accordance with the provisions of Article 6978, and with like authority to retain and sell as provided in the preceding article for a failure to pay the inspection fees. [Acts 1925, S.B. 84.]

#### Art. 6990a. Shipping Imported Hides

Whoever ships from any port in this State any hides of cattle imported from Mexico without first having procured a certificate of importation and inspection in accordance with law shall be fined not less than one nor more than five dollars for each hide so shipped. [1925 P.C.]

#### Art. 6990b. Selling Hides Without Inspection

Whoever sells any hides of cattle without the same having been inspected shall be punished as prescribed in the preceding article. [1925 P.C.]

#### Art. 6990c. Receiving Uninspected Animals for Shipment

If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind,

shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each such animal.

[1925 P.C.]

#### Art. 6991. Notify if Stolen

If an inspector finds among hides or animals imported from Mexico any hides or animals which from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, he shall separate said hides or animals from others undergoing inspection and take possession of the same and notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. If no person appears to claim said hides or animals, the inspector shall within twenty-four hours, make oath before the district judge, the county judge, or any justice of the peace of the county, according to the value of the property involved, that he has reason to believe that said hides or animals have been stolen; whereupon said judge or justice shall issue a citation directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show cause why said property should not be condemned.

[Acts 1925, S.B. 84.]

#### Art. 6992. Importer to Recover

If said importer or claimant makes proof that he is the lawful owner of said hides or animals by showing a bill of sale from the owner of same, or his legally authorized agent, and by showing complete chain of transfer of title from the original owner of the brand to himself, or his firm, such judge or justice shall direct the same to be delivered to said importer or claimant upon his paying the inspection fees.

[Acts 1925, S.B. 84.]

#### Art. 6993. Hides or Animals Sold

If the importer or claimant of said hides or animals fail to establish his claim as the lawful owner of the same, or to any number of hides or animals so seized, the district judge, county judge or justice shall direct that said property be sold at public auction by the inspector, after a notice of ten days, published in a newspaper, should there be one published in said county, or if no newspaper be published in the county, then by written notice, posted at the courthouse door and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. The inspector shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor. Said treasurer shall place one-half of said sum of money to the credit of the school fund and the other

half to the credit of the jury fund of said county.

[Acts 1925, S.B. 84.]

**Art. 6994. Property Delivered to Owner**

If any person appears and claims any hides or animals imported from Mexico at any time before the same shall have been sold as above directed, and should said claim be established before such judge or justice of the peace of said county, such property shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; provided that at any time before proceedings shall have been commenced as above directed the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides or animals imported by him from Mexico and presented in any county of this State for inspection, and upon such payment and the fees for inspection such hides or animals shall be released.

[Acts 1925, S.B. 84.]

**Art. 6995. Brand Recorded Once**

In all cases where application for registration of any mark or brand shall be made, the county clerk shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk thereof, stating that such brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded; and the clerk shall make a minute on the record setting forth said facts.

[Acts 1925, S.B. 84.]

**Art. 6996. In County of Range**

All marks and brands of cattle shall be recorded in the county or counties in which they usually range. When cattle are gathered near the county line, the bills of sale of the same shall be recorded in both counties. When any stock or cattle is sold, the fact shall be noted on the record opposite or near the record of its mark or brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. The inspector shall procure certified copies of the marks and brands of this county for himself and his deputies, and monthly have added thereto the marks and brands that may be recorded.

[Acts 1925, S.B. 84.]

**Art. 6997. Only One to be Used**

No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand.

Any person may own and possess animals in many marks and brands, the same having been acquired by him by purchase; and written bills of sale, properly acknowledged from the previous owner or owners shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark.

[Acts 1925, S.B. 84.]

**Art. 6997a. Penalty for Using More Than One Brand or Mark**

Whoever in originally branding or marking cattle uses more than one mark or brand shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked.

[1925 P.C.]

**Art. 6998. Counterbranding**

In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding.

[Acts 1925, S.B. 84.]

**Art. 6998a. Unlawful Counterbranding**

Whoever counterbrands any cattle without the consent of the owner or his agent shall be fined not less than ten nor more than fifty dollars for each animal so counterbranded.

[1925 P.C.]

**Art. 6999. Authority to Gather, etc.**

Any person having marks and brands recorded in the office of the county clerk may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified lists shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock. The filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described.

[Acts 1925, S.B. 84.]

**Art. 7000. Inspections Personal**

In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully

inspect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the record owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him, as appears by bills of sale from recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the State for sale or slaughter; or if out of the State, he shall then name the place on the border of the State through which it is proposed to drive or ship such stock.

[Acts 1925, S.B. 84.]

#### Art. 7001. Inspection Before Export

Whenever any person shall be about to drive or ship any stock out of the State, if the inspector shall believe or is informed by any credible person that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment or border county where said person leaves the State, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in Article 6988, provided that said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection.

[Acts 1925, S.B. 84.]

#### Art. 7002. Seizure of Other Cattle

If the inspector at the point of destination shall find upon inspection that the owner of the herd or person in charge has in his herd

other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall be had as are prescribed in Article 6981. If the person in charge of any such cattle refuses to deliver the same into the possession of the inspector, such inspector may obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon said proceedings shall be had before the officer issuing the writ, either in term time or in vacation.

[Acts 1925, S.B. 84.]

#### Art. 7003. Proceeds Into Treasury

The net proceeds of the sale of cattle condemned under the preceding article, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle. If no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, with the amount for which sold.

[Acts 1925, S.B. 84.]

#### Art. 7004. Change of Destination

If the owner of the inspected herd desires to sell, slaughter or ship the cattle, or any of them, at any place other than the destination named in the original certificate of inspection he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination, like proceedings shall be had in the way of inspection, comparison and return of the certificate of inspection, as are prescribed for the original point of destination.

[Acts 1925, S.B. 84.]

#### Art. 7005. Counties Exempt

The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brooks, Brazoria, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas,

Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jackson, Jack, Jasper, Jeff Davis, Jim Hogg, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kleberg, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Matagorda, Maverick, Medina, McLennan, Midland, Milam, Mills, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Rains, Randall, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Patricio, Schleicher, Shelby, Smith, Shackelford, Somervell, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wilson, Wise, Winkler, Young, Zapata, and Zavala are hereby exempted from the provisions of this Chapter, and from all laws regulating the inspection of hides and animals.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 156, ch. 105; Acts 1931, 42nd Leg., p. 755, ch. 299; Acts 1931, 42nd Leg., p. 852, ch. 360; Acts 1933, 43rd Leg., p. 14, ch. 10; Acts 1933, 43rd Leg., Spec.L., p. 59, ch. 49; Acts 1933, 43rd Leg., p. 636, ch. 213; Acts 1937, 45th Leg., p. 413, ch. 208, § 1; Acts 1943, 48th Leg., p. 84, ch. 66, § 1; Acts 1943, 48th Leg., p. 115, ch. 84, § 1; Acts 1945, 49th Leg., p. 550, ch. 335, § 1.]

#### Art. 7005-1. Deaf Smith, Hale, Swisher, and Wichita Counties Exempt From Act

The counties of Deaf Smith, Hale, Swisher, and Wichita are hereafter exempted from all of the provisions of Chapter 7, Title 121, Revised Civil Statutes of Texas, 1925, as well as all amendments thereto, and are further exempted from all other laws regulating the inspection of hides and animals, and particularly Articles 1471 through 1487 of the Penal Code of Texas, 1925.

[Acts 1957, 55th Leg., p. 184, ch. 82, § 1.]

#### Art. 7005-2. Counties Exempted

The counties exempted from the laws regulating the inspection of hides and animals are those as are or may be exempted by statute.

[1925 P.C.]

#### Art. 7006. Local Option Election

Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at a general or special term, order such election to be held

after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. The clerk of said court shall prepare said notices and the sheriff shall post same and make and file with said clerk return of such posting showing time and place thereof.

[Acts 1925, S.B. 84.]

#### Art. 7007. Result

At the time of ordering said election said court shall appoint two judges, designating one of such as presiding judge, and two clerks, who shall hold said election in the same manner as general elections are held. All qualified voters shall be entitled to vote. The ballots shall have written or printed on same "For inspector," or "Against inspector." The presiding judge shall deliver or cause to be delivered one copy of the result of said election, to the county clerk within five days after said election, and retain one copy himself. Within five days after such delivery of such returns to said clerk, the commissioners court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. No election shall be held oftener than every two years under this law. If at such election a majority of the votes cast be "For inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and qualifies. In counties having no inspector, the commissioners court shall appoint one to serve until the next general election.

[Acts 1925, S.B. 84.]

#### Art. 7008. Fees of Inspectors; Act Inapplicable to Certain Counties

Sec. 1. Each inspector of hides and animals, or deputy inspector, provided for in this Chapter shall be entitled to receive Ten (10) Cents for each hide or animal personally inspected by him, but if more than fifty (50) hides or animals are inspected in the same lot, then Ten (10) Cents each for the first fifty (50), and Three (3) Cents each for all above that number, provided that the Commissioners Court of any County not exempted from the provisions of this Chapter may, upon hearing showing the necessity therefor after due notice of the time and place of such hearing having been published once each week for three (3) consecutive weeks in a newspaper of general circulation in such County, by order entered upon the Minutes of such Commissioners Court, authorize said inspector, or deputy inspectors, of said County to charge not to exceed Twenty-five (25) Cents for each hide or animal inspected except in cases where more than fifty (50) hides or animals are inspected in the same lot, in which event no more than Twenty-five (25) Cents each for the first fifty (50) hides or animals inspected and not to exceed Ten (10) Cents each for all hides or animals above that number shall be authorized.

Sec. 2. Provided this Act does not apply to the following Counties in Texas: Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bastrop, Bander, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Colorado, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson,<sup>1</sup> Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Gaines, Galveston, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Harde- man, Hardin, Harris, Harrison, Hartley, Has- kell, Hays, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, Lava- ca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Marion, Mar- tin, Mason, Matagorda, Maverick, Medina, Men- ard, Midland, Milam, Mills, Montgomery, Moore, Morris, Motley, McCulloch, McLennan, Nacogdoches, Navarro, Newton, Ochiltree, Old- ham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Re- fugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shack- elford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swish- er, Tarrant, Taylor, Terrell, Terry, Throckmor- ton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Wharton, Wheeler, Wichita, Wilbarger, Wilson, Williamson, Winkler, Wise, Wood, Yoakum, Young, and Zavala.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 73, ch. 33; Acts 1937, 45th Leg., p. 807, ch. 398, § 1; Acts 1943, 48th Leg., p. 84, ch. 66, § 2; Acts 1943, 48th Leg., p. 115, ch. 84, § 1.]

<sup>1</sup> "Deaf Smith" county omitted on the authority of Acts 1943, 48th Leg., p. 115, ch. 84, § 1, effective March 29, 1943, which read as follows: "Article 7005 and Section 2 of Article 7008, under Chapter 7, Title 121, of the Revised Civil Statutes of the State of Texas of the year 1925 Codification, as amended, are each and both hereby amended by striking from each of said Articles the words 'Deaf Smith' ". On question of validity of amendment in this form, see Const. art. 3, § 36.

#### Art. 7008a. Processing of Export-Import Live- stock; Agreements; Fees

Sec. 1. The Texas Department of Agriculture is hereby authorized to receive and hold for processing livestock or other animals trans- ported in international trade, and to establish and collect reasonable fees for yardage, main- tenance, feed, medical care, and other neces- sary expenses incurred in the course of process- ing.

Sec. 2. The Texas Department of Agricul- ture is hereby authorized to execute agree- ments with corporations, companies or other private concerns to provide feed, medical care or other necessary goods and services in con- nection with the processing of export-import livestock or other animals.

Sec. 3. In order to assure the collection of fees herein authorized, the Texas Department of Agriculture shall collect such fees or other indebtedness owed the State and suppliers of goods and services in connection with the proc- essing of export-import livestock or other ani- mals, prior to the time such livestock or other animals are removed from the Department of Agriculture processing facilities. Livestock or other animals left by their owners in such fa- cilities for longer than thirty (30) calendar days may be sold at public auction to satisfy any unpaid fees or indebtedness of the State of Texas and private suppliers. Such fees or in- debtedness shall be deducted from the proceeds of sale and shall be paid in the following or- der:

(1) Fees due the State of Texas shall be paid first and deposited in the General Revenue Fund of the State;

(2) When all fees due the State of Tex- as have been paid, fees or other indebted- ness due private suppliers shall be paid and forwarded to them;

(3) The balance of proceeds remaining, if any, shall be forwarded to the owner or owners of the livestock or other animals sold at auction, such owner or owners to be determined by the manifest or shipping order accompanying such livestock or oth- er animals.

Sec. 4. The Texas Department of Agricul- ture shall exercise reasonable care in the han- dling and movement of livestock or other ani- mals utilizing export-import processing facili- ties of the Department. The Department shall not be held responsible for death or injury suf- fered by livestock or other animals as a result of the negligence or criminal conduct of pri- vate suppliers or persons who are not autho- rized employees of the Department.

[Acts 1971, 62nd Leg., p. 2890, ch. 954, eff. June 15, 1971.]

#### CHAPTER EIGHT. ANIMAL HEALTH COMMISSION

Article .	Commission.
7009.	Commission.
7009a.	Change of Name.
7009b.	Texas Animal Health Commission.
7010 to 7014.	Repealed.
7014a.	Owner Vaccinating Own Hogs.
7014b.	Refusing Examination by Commission.
7014c.	Prevention of Livestock Diseases by Regulat- ing Movement of Livestock.
7014d.	Stopping and Inspecting Shipments of Live- stock or Livestock Products.
7014e-1.	Regulations as to Scabies, Quarantine, Dip- ping, and Penalties.
7014e-2.	Failure to Dip for Scabies.
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Article

- 7014e-4. Disinfecting Premises Quarantined.
- 7014e-5. Moving Stock with Scabies.
- 7014f-1. Eradicating Diseases Among Livestock and Domestic Fowls.
- 7014f-2. Failure to Report Charbon or Anthrax.
- 7014f-3. Failure to Destroy Carcass.
- 7014f-4. Disobeying Charbon Quarantine.
- 7014f-5. Permitting Animals to Run at Large.
- 7014f-6. Failure to Confine Animal with Glanders.
- 7014f-7. Sale or Trade of Animal with Glanders.
- 7014f-8. Using or Permitting Animal with Glanders to Run at Large.
- 7014f-9. Unattenuated Hog Cholera Virus; Sale, Exchange or Distribution; Violations; Penalties.
- 7014f-10. Duty of Veterinarians to Report Diseases.
- 7014f-11. Diseased Cattle; Sales, Releases, Diversions and Deliveries; Fines.
- 7014f-12. Bang's Disease; Branding and Tagging Infected Cattle; Refusal to Permit Branding; Penalty.
- 7014f-13. Bang's Disease; Sale of Infected Cattle Unlawful; Prima-Facie Evidence of Knowledge; Penalty.
- 7014f-14. Foot and Mouth Disease; Quarantines.
- 7014g-1. Tick Eradication Law.
- 7014g-2. Transportation of Animals and Products Under Quarantine Because of Fever Tick and Screwworm Infestation; Treatment and Certification.
- 7015 to 7040. Repealed.

**Art. 7009. Commission**

(a) The Governor shall, within thirty days after this Act becomes effective, by and with the advice and consent of the Senate, appoint nine citizens of this state as a Texas Animal Health Commission. The Governor shall designate one such member as a Chairman. Each Commissioner shall give bond payable to the State of Texas in the sum of Ten Thousand Dollars to be approved by the Comptroller. There shall be one Commissioner from each of the following industries, and with the following qualifications: (1) practitioner of veterinary medicine; (2) dairyman; (3) practical cattle raiser; (4) practical hog raiser; (5) sheep or goat raiser; (6) poultry raiser; (7) an individual involved in the equine industry; (8) an individual involved in the feedlot industry; and (9) an individual involved in the livestock marketing industry.

(b) Insofar as is practicable the Commissioners appointed hereunder shall be appointed so as to give proportionate representation from the west, from the south, from the north, and from the eastern portions of Texas; provided, however, that the present members of the Texas Animal Health Commission of the State of Texas shall compose six of the nine members hereunder authorized, and shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill each term, and that beginning with the appointment of said Commissioners, present membership excepted, the term of office of the members of the Commission shall be for a period of six years, except that those first appointed shall be appointed for two, four, and six years, and

that they shall serve until their successors have been appointed and have duly qualified. All vacancies which shall occur in the Commission for any reason shall be filled in the same manner as hereinbefore provided, and shall be for the unexpired term.

Each Commissioner is entitled to receive \$20 per diem plus the actual and necessary expenses incurred while in the performance of his official duties.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 253, ch. 131, § 1; Acts 1955, 54th Leg., p. 1167, ch. 448, § 1; Acts 1965, 59th Leg., p. 217, ch. 89, § 1, eff. April 22, 1965; Acts 1973, 63rd Leg., p. 781, ch. 347, § 1, eff. June 12, 1973.]

**Art. 7009a. Change of Name**

Sec. 1. The name of the Livestock Sanitary Commission of Texas is hereby changed to the Texas Animal Health Commission.

Sec. 2. Wherever the name Livestock Sanitary Commission, or any reference thereto, appears in the statutes of this State, such name and such reference shall hereafter mean and apply to the Texas Animal Health Commission, in order to conform to the new name as provided in Section 1 hereof.

Sec. 3. All laws relating to livestock disease control and all regulations, quarantines and orders heretofore issued by the Livestock Sanitary Commission of Texas shall not be affected, and all appropriations and benefits shall be available to and apply to the Texas Animal Health Commission.

[Acts 1959, 56th Leg., p. 430, ch. 192.]

**Art. 7009b. Texas Animal Health Commission**

The word "Commission" as used in this chapter shall mean The Live Stock Sanitary Commission of the State of Texas.

[1925 P.C.]

**Art. 7010 to 7014. Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38**

**Art. 7014a. Owner Vaccinating Own Hogs**

No law of this State shall prevent any person from vaccinating, inoculating, or treating his own hogs or for any person employed as County Demonstration Agent from vaccinating, inoculating or treating any hogs in the county where he is employed with hog cholera virus or serum or other remedy; or dogs with any serum or virus that will prevent rabies, and any law in conflict with this Act is hereby repealed.

[Acts 1927, 40th Leg., p. 217, ch. 146, § 1.]

**Art. 7014b. Refusing Examination by Commission**

Any person who owns or is in possession of livestock or dead carcasses or parts thereof, which the Texas Animal Health Commission or its agents has reason to believe to be affected with any infectious or contagious disease, and who refuses to allow the Commission or its agents to examine such stock and the premises,

property, or vehicles containing such stock or hinders or obstructs the Commission or its agents in any such examination, shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) for each offense.

[1925 P.C.; Acts 1963, 58th Leg., p. 595, ch. 216, § 1.]

#### Art. 7014c. Prevention of Livestock Diseases by Regulating Movement of Livestock

##### Definitions

Sec. 1. As used in this Act the following terms shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall also apply to the plural.

(a) The term "Commission" shall mean the Livestock Sanitary Commission of Texas.

(b) The term "livestock" means, and shall include, any bovine, equine, caprine, ovine or porcine animal.

(c) The term "person" means and includes any person, firm, partnership, corporation or association.

(d) The term "livestock market" means, and includes any stockyard, sales pavilion or sales ring where livestock are assembled and concentrated at regular or irregular intervals, for sale, trade, barter or exchange.

(e) The term "livestock market operator" means and includes any person, firm, partnership, corporation or association owning or operating any stockyard, sales pavilion or sales ring where livestock are assembled or concentrated at regular or irregular intervals for sale, trade, barter or exchange.

(f) The term "dipping" means submerging livestock in a vat, spraying livestock, or any other sanitary treatment of livestock as may be determined by the Commission.

##### Regulations; Movement Out of Markets; Tests, Immunization or Dipping

Sec. 2. It shall be the duty of the Commission to adopt regulations relating to movements of livestock out of livestock markets, to require such tests, immunization or dipping, as may be considered necessary as a protection against dissemination of contagious, infectious or communicable livestock diseases.

##### Notice of Intent to Promulgate Regulations; Hearing

Sec. 2a. Before regulations of the Livestock Sanitary Commission relating to the movement of livestock out of livestock markets shall become effective, notice of intent to promulgate such regulations shall be given by posting a copy of such proposed regulations at the courthouse door of each county seat in the State of Texas. Said notice shall also inform the public that on a designated date stated in such posted notice a hearing will be had at the office of the Livestock Sanitary Commission of Texas at

which hearing any person who objects to such proposed regulations or any part thereof shall have the right to appear either in person or by representative or both, and to state his objections. All such facts and evidence developed at such hearing shall be considered and evaluated by the Livestock Sanitary Commission and public notice shall be given by the Livestock Sanitary Commission within ten (10) days after such hearing stating whether or not such objections have been approved and adopted or have been disapproved and rejected by the Livestock Sanitary Commission.

##### Testing and Dipping Facilities; Access of Commission Representatives to Market; Violations

Sec. 3. The Commission is hereby authorized to require the operators of all livestock markets herein defined to furnish adequate chutes, holding pens and to furnish or have access to such other essential testing and dipping facilities within the immediate vicinity.

Representatives of the Commission are hereby authorized to enter any livestock market for the exercise of any authority, or performance of any duty authorized under this Act.

Failure or refusal on the part of the livestock market operator to furnish adequate facilities or to permit representatives of the Commission to enter such market, or to exercise authority or perform such duty provided under this Act, shall constitute a misdemeanor and, upon conviction, such livestock market operator shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Each day of violation will constitute a separate offense.

##### Testing or Vaccinating Livestock

Sec. 4. The testing or vaccination required by this Act shall be performed by accredited veterinarians or qualified personnel authorized by the Commission. The State of Texas shall not be required to pay the cost of fees charged for such testing or vaccination.

##### Inspection Prior to Sale

Sec. 5. All livestock consigned to and delivered on the premises of any livestock market shall, before being offered for sale, be visually inspected by an authorized inspector who shall, before livestock is removed from the livestock market, if deemed necessary, test or have tested, or vaccinated each and every animal consigned to such livestock market.

##### Removal Without Certificate; Fine

Sec. 6. Any person who shall remove any livestock from any livestock market, without a certificate, as required in any regulation adopted by the Commission, shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each head of livestock removed from the livestock market in violation of regulations of the Commission.

##### Violation of Act

Sec. 7. Any person or persons, their agent or employee, who shall violate any provision of

this Act or any rule, regulations or requirement adopted pursuant to this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each day, which shall constitute a separate offense.

[Acts 1959, 56th Leg., p. 428, ch. 191; Acts 1973, 63rd Leg., p. 1773, ch. 649, § 1, eff. June 16, 1973.]

#### Art. 7014d. Stopping and Inspecting Shipments of Livestock or Livestock Products

##### Authority to Stop and Inspect Shipments

Sec. 1. Agents of the Texas Animal Health Commission shall have the right to stop and inspect all shipments of livestock or livestock products being transported into or through the State of Texas at any point or place en route in order to determine that said shipment is in compliance with all laws, rules, and regulations administered by the Texas Animal Health Commission affecting such shipments, and to see that said shipment did not originate from a quarantined area or herd, and does not represent a danger to the public health or livestock industry through insect infestation or through any infectious, noninfectious, or contagious disease. Livestock products as used in this Act shall mean livestock products capable of carrying diseases and insects, including litter, straw or hay used for bedding that may endanger the livestock industry and includes hides, bones, hoofs, horns, viscera and parts of animal bodies.

##### Detention; Unloading Shipment; Railroad Trains

Sec. 2. If any shipment of livestock or products thereof is being transported contrary to prescribed laws, rules, or regulations, it may be detained until compliance is obtained. This may include unloading said shipment from transporting vehicle at the nearest available unloading facility. Provided, however, that no railroad train shall be inspected except at terminal points.

##### Violations; Fines

Sec. 3. Any person who refuses to permit inspection of any livestock being transported, or fails to stop any truck, trailer, wagon or automobile suspected of carrying livestock or livestock products when requested or signaled to do so by an agent of the Texas Animal Health Commission or violates any provision of this Act shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

##### Signs and Signals to Stop Vehicles

Sec. 4. The Texas Animal Health Commission, or its agents, are hereby authorized to post signs on public highways and to use signaling devices such as red lights when necessary in conjunction with signs in order effectively to signal and stop livestock vehicles for inspection.

[Acts 1963, 58th Leg., p. 309, ch. 115.]

#### Art. 7014e-1. Regulations as to Scabies, Quarantine, Dipping, and Penalties

##### Failure to Dip Infected Sheep or Cattle a Misdemeanor

Sec. 1. Any person, company or corporation owning, controlling or caring for any sheep which are infected with sheep scabies, or cattle which are infected with cattle scabies, or that have been exposed to the said sheep or cattle scabies infection within six months next preceding the issuance of the written direction to dip hereinafter provided, who shall fail or refuse to dip any of said sheep or cattle at such time and in such manner as directed in writing by the Live Stock Sanitary Commission or its Chairman as provided for in this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$5.00 nor more than \$200.00, and each day of such failure or refusal shall constitute a separate offense.

##### Definition

Sec. 1a. In this Act, "dip," "dipped," and "dipping" refer to submerging livestock in a vat, spraying livestock, or any other sanitary treatment of livestock as may be determined by the Texas Animal Health Commission.

##### Direction to Dip; Intervals

Sec. 2. The Live Stock Sanitary Commission or its Chairman is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling, or caring for any sheep or cattle which are subject to being dipped under the provisions of this Act, to dip any or all of said sheep or cattle under the supervision of an authorized inspector of such Commission in the dip or dipping solutions hereinafter provided for the dipping of sheep and cattle respectively for the purpose of destroying, eradicating, curing, and removing such scabies or exposure thereto. Said dipping or dippings shall, when administered for psoroptic scabies infection or exposure among sheep or cattle, be at regular intervals of from ten to fourteen days, but when said dipping or dippings shall be administered for sarcoptic scabies infection or exposure among cattle the same shall not be required at more frequent intervals than every six days.

##### Solution for Dipping Sheep

Sec. 3. All dippings of sheep for scabies infection or exposure under the provisions of this Act shall be done in a solution of lime and sulphur made in the following proportions: Eight pounds of unslaked lime or eleven pounds of commercial hydrated lime (not air slaked lime) and twenty-four pounds of Flowers of Sulphur to each one hundred gallons of water, said solution to be boiled for a period of at least two hours before using, which shall at all times be maintained at a strength of not less than one and one-half per cent sulphide sulphur or in such other dip or dipping solutions as may be approved by the Live Stock Sanitary Commission of this State and desig-

nated by it in the written instructions and notice to dip served upon such person or persons, company or corporation owning, controlling, or caring for said sheep. The dipping solution shall at all times be maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit. No dipping solution shall be used which has been mixed and in the vat more than ten days.

Solution for Dipping Cattle for Psoroptic  
Scabies Infection

Sec. 4. All dipping or dippings of cattle for psoroptic scabies infection or exposure thereto shall be done in the same solution or dip as above provided for dipping sheep except that the solution or dip shall be maintained at a strength of not less than 2 per cent sulphide sulphur and the same shall be at all times maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit.

Solution for Dipping Cattle for Sarcoptic  
Scabies Infection

Sec. 5. All dipping or dippings of cattle for sarcoptic scabies infection or exposure thereto shall be done in the same solution or dip as herein provided for dipping cattle infected with or exposed to psoroptic scabies infection, except the dippings shall not be required at more frequent intervals than six days, and further provided that one dipping in crude oil shall be considered effective and sufficient for eradication of sarcoptic scabies infection among cattle.

Supervision; Definitions

Sec. 6. All dippings, inspections, and certifications for scabies among sheep and cattle, and all disinfection of cars, sheds, boats, chutes, alleys, platforms, pens, and yards required by the provisions of this law shall be done under the supervision of an authorized inspector of the Live Stock Sanitary Commission of Texas.

(a) All sheep infected with scabies and all sheep in a herd where scabies infection is present shall be classed as scabies infected sheep.

(b) All cattle infected with scabies and all cattle in a herd where scabies infection is present shall be classed as scabies infected cattle.

(c) All sheep and cattle that enter or have access to any corrals, sheds, cars, roads, pastures, premises, or other places that scabies infected sheep or cattle, as the case may be, have entered or had access to at any time within the next preceding ninety days shall be classed as exposed to scabies infection, and all sheep shorn by a shearing plant that has shorn infected sheep within the next preceding ninety days shall be classed as scabies exposed sheep, provided the above named places or premises have not been disinfected since the infected sheep have moved or been removed therefrom, provided that cattle and sheep shall be subject to dipping as provided for in Section 1 of this

Act at any time within the period of time prescribed in said Section 1, and in accordance with the provisions of said Section 1.

Quarantined Sheep or Cattle; Moving Prohibited

Sec. 7. No sheep or cattle that are under quarantine for scabies infection or exposure by written order of the Live Stock Sanitary Commission or its Chairman, or that are on any premises within this State which are quarantined by said Commission for scabies infection or exposure thereto shall be moved or allowed to move therefrom unless and until certified to by an authorized inspector of the Live Stock Sanitary Commission. Any person, firm or corporation violating the provisions of this Section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$10.00 nor more than \$200.00.

Appropriations to Employ Inspectors; Blanket  
Quarantine Otherwise

Sec. 8. When the fact has been determined by inspection or investigation that sheep or cattle scabies infection exists in any County within this State, then the County Commissioners' Court of such County shall appropriate a sufficient sum of money to employ County inspectors to cooperate with and under the direction of the Live Stock Sanitary Commission of Texas in scabies eradication.

If for any reason the County Commissioners' Court does not cooperate by appropriating the said money to pay said inspector or inspectors, then it shall be the duty of the Live Stock Sanitary Commission to place the County under blanket quarantine, and no sheep or cattle shall be moved therefrom until and unless certified to by an authorized inspector of the Live Stock Sanitary Commission.

Goats, Dipping of

Sec. 9. All goats ranging with infected sheep shall be dipped at least once in the same solution and in the same manner as infected sheep except they shall not be held in the dipping vat for a longer period than is necessary to thoroughly wet them.

Directions, Requisites of

Sec. 10. The written direction issued by the Live Stock Sanitary Commission or its Chairman requiring the dipping of sheep or cattle for sheep or cattle scabies under the provisions of this Act shall be dated showing the date of its issuance, the name of the person or persons, company or corporation to whom the said directions are given, the approximate location of the premises on which the said livestock are located, the name of the County in which said premises are located, and it shall state in clear and intelligible language that the said sheep or cattle which the said person or persons, company or corporation is therein directed to dip, are infected with scabies or that they are exposed thereto, and it shall direct said person or persons, company or corporation to dip the said livestock under the supervision of

an authorized inspector of the Live Stock Sanitary Commission in the dipping solutions provided in this Act, or such other dipping solutions as the Live Stock Sanitary Commission may approve for such purpose, designating the same, and it shall designate the date, place and time that the said dipping is to be done, and it shall be signed by the Live Stock Sanitary Commission or its Chairman.

**Delivery of Directions; Rescission; Hearing**

Sec. 11. The said dipping direction shall be delivered to the person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. The person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped under the provisions of this Act may file with the Live Stock Sanitary Commission or its Chairman at any time within five days after receiving said dipping directions to dip, a written affidavit denying the said sheep or cattle are subject to being dipped under the provisions of Law or that for good and sufficient reason set out in said affidavit the said person, company or corporation is entitled to have said dipping direction rescinded or to have said dipping postponed, and requesting that the Live Stock Sanitary Commission or its Chairman withhold enforcement of said dipping direction and grant a hearing on said matter or make necessary investigation to determine the correctness of the statement contained in such affidavit. Upon receipt of said affidavit the Live Stock Sanitary Commission or its Chairman shall within five days thereafter grant said affiant a hearing in the office of the Chairman of the Live Stock Sanitary Commission, if the affiant so desires, and give such affiant notice of such hearing by telegram or registered mail, which hearing shall be had not less than four days after the giving of such notice and that said Live Stock Sanitary Commission or its Chairman shall consider such ex-parte affidavits as such person, company or corporation may file with said Commission in said hearing and said Commission or its Chairman shall make such investigation in person or through its authorized representative in reference to said affidavit as the Commission or its Chairman deem necessary, and if the statements in said affidavit are found to be correct the said dipping direction shall be rescinded by the said Commission or its Chairman, or said dipping postponed to such time as said Commission or its Chairman may consider proper. Otherwise, the said dipping direction shall be enforced on the date and at the time specified in said written direction. The said Commission or its Chairman, after having granted said hearing or said investigation, shall notify said person, company or corporation in writing of its or his findings, which notice shall be delivered to the said person, company, or corporation at least four full days before the day and time he or they

are required to dip said sheep or cattle by virtue of said written direction. If the said person, company or corporation shall be dissatisfied with the findings of said Commission or its Chairman, he or they may apply to a court of proper venue and jurisdiction for injunction or other relief.

**Inspection of Animals for Infection**

Sec. 12. The ascertaining of the presence of scabies infection on any premises, place, sheep, or cattle or the ascertaining of exposure of premises, places, sheep or cattle to scabies infection shall be done by an authorized representative or inspector of the Live Stock Sanitary Commission and for such purpose said representatives and inspectors are hereby authorized to enter upon any private or public premises of this State where sheep or cattle are kept or ranged, and it shall be the duty of the person or persons, company or corporation owning or controlling such premises or range or the sheep or cattle thereon, when requested by such representative or inspector or member of said Commission, to gather the sheep or cattle on said range for inspection, and a failure or refusal to do so shall be prima facie evidence that the said premises and the sheep or cattle thereon are infected with scabies, and authorize the quarantining of such premises and the sheep and cattle thereon under the provisions of Law, authorizing such quarantine by order of the Live Stock Sanitary Commission. Any person who shall refuse to gather any sheep or cattle of which he is the owner or caretaker from the range when requested by an inspector of the Live Stock Sanitary Commission for the purpose of inspection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$10.00 nor more than \$200.00, and on each day on which said refusal is made shall constitute a separate offense.

**Itinerant Shearing Plant and Crew; Disinfecting**

Sec. 13. When sheep infected with scabies are located upon premises which are under quarantine for sheep scabies under the Laws of this State are shorn by an itinerant shearing plant or shearing crew it shall be unlawful for the person, company or corporation owning, controlling or having charge of such shearing plant or crew or the laborers engaged in the shearing of said sheep or packing the wool shorn therefrom to move from the premises where said sheep are shorn until the said shearing plant and wearing apparel of said shearers in use during such shearing shall have been disinfected as hereinafter provided.

**Method of Disinfecting Shearing Equipment and Wearing Apparel**

Sec. 14. All utensils, machinery, floors, ground coverings, or other portions of said shearing plant which come in contact with the body of said sheep shall be thoroughly cleaned with pure gasoline. The wearing apparel of the laborers engaged in shearing said sheep and handling and packing the wool shorn from

said sheep shall be disinfected by being submerged in boiling water for a period of five minutes.

**Failure to Disinfect Shearing Equipment or Wearing Apparel**

Sec. 15. Any person, company or corporation owning, controlling or having charge of any itinerant shearing plant or crew or person shearing sheep or handling or packing the wool therefrom which are infected with scabies or located upon premises under quarantine for sheep scabies who fails or refuses to disinfect the said shearing plant or any portion thereof or the wearing apparel as herein required shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one nor more than one hundred dollars.

**Corrals, Pens, Etc., Disinfecting After Quarantine**

Sec. 16. When any premises are placed under quarantine for sheep scabies infection it shall be the duty of the owner, lessee, or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep have been closely confined in the following manner:

**Manner of Disinfecting Corrals, Pens, Etc.**

Sec. 17. All manure and litter shall first be removed or burned or buried, then the surface of such corrals, water lots, pens, sheds, or other places where sheep have been closely confined shall be sprayed with a solution made of six ounces of 95 per cent carbolic acid to each gallon of water, or a solution containing four ounces of cresol compound U.S.P. to each gallon of water under the supervision of an authorized inspector of the Live Stock Sanitary Commission before any sheep which are not infected with scabies or exposed thereto shall be permitted to enter such corrals, water lots, pens, sheds, or other places where infected sheep have been closely confined. Any person, company or corporation violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five nor more than fifty dollars.

**Dipping Where Owner Refuses to Dip; Expense**

Sec. 18. When any person, company or corporation owning, or having charge of any sheep or cattle required to be dipped under the provisions of this Act for infection or exposure to sheep or cattle scabies shall for any reason fail or refuse to dip said sheep or cattle it shall be the duty of the County Commissioners' Court of said County under the direction and supervision of an authorized inspector of the Live Stock Sanitary Commission to have said sheep or cattle dipped in accordance with the provisions of this Act, and to pay the expense of such dipping by warrant drawn upon the general funds of the said County. It shall be the duty of the County Commissioners' Court of any and all Counties within the State of Texas to cooperate with the Live Stock Sanitary Commission in eradication and control of

cattle and sheep scabies within their respective Counties whenever the said disease exists in said Counties or whenever the Live Stock Sanitary Commission has reason to believe that the infection exists therein; Counties shall pay the salaries and necessary traveling expenses of County inspectors for the purpose of inspecting, dipping, and certifying to live stock in said Counties, said inspectors to be appointed by the Live Stock Sanitary Commission and to work under the direction of the Live Stock Sanitary Commission, and said inspectors are hereby required to perform all duties necessary to the inspection, dipping, and certification of said live stock. In case the owner or caretaker fails or refuses to dip his live stock in compliance with any of the provisions of this Act, the County Commissioners' Courts shall provide necessary dipping vats, facilities, and pens, together with dipping fluids and material for dipping said live stock, the same to be furnished at the expense of the respective counties, to be paid for out of their general funds.

**Inspectors Right to Enter Premises; Penalty for Refusal to Permit Entry**

Sec. 19. Inspectors of the Live Stock Sanitary Commission are hereby authorized and directed to enter upon the premises of any person, firm or corporation for the purpose of inspecting, classifying, or dipping cattle or sheep for scabies or exposure thereto whenever in the opinion of the Live Stock Sanitary Commission such inspection, classification, or dipping is deemed necessary. Any person who shall refuse to permit an inspector of the Live Stock Sanitary Commission to enter upon any premises of which he is the owner or tenant or caretaker for the purpose of making said inspection, classification, or dipping, shall be deemed guilty of a misdemeanor and upon conviction shall be fined any sum not less than \$10.00 and not more than \$200.00, and each separate day on which said refusal is made shall constitute a separate offense.

**Chief Cattle and Sheep Scabies Inspector; District and Local Inspectors**

Sec. 20. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Cattle and Sheep Scabies Inspector, whose duties shall be to supervise the inspectors engaged in sheep and cattle scabies eradication, and the said Commission shall employ District Supervising Inspectors and Local Inspectors for the purpose of eradicating cattle and sheep scabies. Salaries of local County Inspectors to be paid by the Counties, but salaries of the said Chief Inspector and District Supervising Inspectors to be paid by the State.

**Hauling or Driving Infected Sheep or Cattle**

Sec. 21. It shall be unlawful for any person, company or corporation to drive, drift, ship, or haul by common carrier or private conveyance, or in any other manner transport or move or permit the movement along or across any public road or railroad or on or across the land or premises of another, any sheep or cat-

tle which are infected with or exposed to scabies or that are under quarantine for scabies infection or exposure, and any person violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$10.00 nor more than \$200.00. Provided that each public road, railway, and premise of another along, across, or onto which said person, company or corporation shall drive, drift, haul or transport any of said live stock shall constitute a separate offense. Provided that the venue for the prosecution of persons, firms, or corporations violating any quarantine provision of any section of this Act shall be in the County from which said illegal movement was made and in any and all counties into or through which said live stock moved.

Importations

Sec. 22. From and after the passage of this Act importation of sheep into this State by rail or other mode of movement shall not be made except under the following restrictions:

(a) The importer must apply to and receive from the Texas Animal Health Commission permission to import any sheep into the State.

(b) Such importations shall be accompanied by a certificate of a regularly and duly authorized sheep scabies inspector of the State of origin or a duly appointed and acting sheep scabies inspector of the Animal Health Division, United States Department of Agriculture, certifying that said sheep are free from scabies infection and exposure thereto, or that said sheep have been dipped in a dipping fluid recognized by the Animal Health Division, United States Department of Agriculture, for eradication of sheep scabies and in a manner calculated to have eradicated infection or exposure as the case may be within ten days next preceding the date of such importation, provided, however, that sheep dipped for infection at point of origin shall be held under quarantine at point of destination for a period of one hundred and eighty days. By "point of destination" as used herein is meant the range upon which the said sheep are placed in this State.

(c) The Commission shall have the authority to promulgate regulations designating areas as being infected or free and shall set the dipping requirements for importation of sheep into the State of Texas.

(d) The importer of show sheep shall be given a reasonable length of time to display his sheep at County Fairs or Live-stock Exhibits, but in no instance shall this time be extended for a longer period than sixty days from date of importation and all such sheep shall be kept separate from all other than show sheep, and shall be dipped at least once before being distributed to the range.

(e) Any person, company or corporation importing any sheep into this State in violation of this section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not less than \$25.00 nor more than \$100.00 for each head of sheep so unlawfully imported, and the venue of such prosecution, shall be in any County through or into which such importation is carried. Provided that each County into or through which said sheep are moved shall constitute a separate offense.

Carriers; Imported Sheep; Permit

Sec. 23. No common carrier by rail in this State shall receive from any shipper or connecting carrier for importation into this State any shipment of sheep unless the bill of lading covering said shipment is accompanied by a written permit from the Texas Animal Health Commission permitting such sheep to be imported into this State.

Violations by Carriers; Suits

Sec. 24. Any common carrier violating the provisions of this Section of this Act shall forfeit to the State the sum of not less than \$1.00 nor more than \$5.00 per head for each sheep so unlawfully transported by it, which may be recovered by suit instituted on behalf of the State in any Court of this State having jurisdiction of the amount involved in any County through which said common carrier by rail transported such shipment. Provided that such suits may be maintained in all Counties into or through which said movement of sheep is transported, said suits shall be instituted by the County attorney of the respective Counties into or through which said movements are made and further provided that if any corporation or company shall violate any of the penal provisions of this Act, it shall be the duty of the County Attorneys in each County in which said offense occurs to file a civil suit in the Court of proper jurisdiction in the name and on behalf of the State of Texas for the collection of said penalties.

Quarantine; Authority of Live Stock Sanitary Commission

Sec. 25. The Live Stock Sanitary Commission is hereby authorized to quarantine any County or district or premises, places, roads, pastures, lots, yards, stockyards, enclosures, cattle or sheep whenever it has determined by inspection through an authorized inspector that scabies infection or exposure thereto exists therein or thereon, and notice of said quarantine shall be given by posting a written notice thereof at the County Court House door of the County in which said quarantine is established and two other notices in conspicuous places within the area or place quarantined, or by publication in a newspaper in said County, or if there be no newspaper therein, by publication in some newspaper in an adjoining County or by delivering a written or printed notice thereof to the owner or caretaker of the live

stock or territory or place to be quarantined, said delivery to be made in person by an inspector or other employé of the Live Stock Sanitary Commission, or by a member of said Commission to deliver the same, or by sending by United States mail. Any one of the foregoing methods of giving notice shall be sufficient, but it shall not be necessary to give notice in more than one way. Whenever a territory, County, or district is quarantined under the provisions of this Act, all local premises, cattle and sheep therein shall thereby become quarantined without designating them separately.

#### Chairman's Authority

Sec. 26. The Chairman of the Live Stock Sanitary Commission is hereby authorized to perform any and all acts and duties which the Live Stock Sanitary Commission is authorized by this Act to do.

[Acts 1927, 40th Leg., 1st C.S., p. 174, ch. 63; Acts 1967, 60th Leg., p. 119, ch. 64, §§ 1, 2, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1773, ch. 649, § 2, eff. June 16, 1973.]

#### Art. 7014e-2. Failure to Dip for Scabies

Any person owning, controlling or caring for any cattle which are infected with cattle scabies, or sheep which are infected with sheep scabies, or that are exposed to said cattle scabies or sheep scabies, or that are on premises or other places on which cattle or sheep scabies are known to exist, or that have at some time within three months next preceding the issuance of the written direction to dip as provided by law, been exposed to the said cattle or sheep scabies, or been on premises or other place on which the cattle or sheep scabies is known to exist, who shall fail or refuse to dip any of said cattle or sheep at such time and in such manner as directed in writing by the Commission, or its chairman, as provided for by law, shall be fined not less than fifty nor more than five hundred dollars and each day of such failure or refusal shall constitute a separate offense.

[1925 P.C.]

#### Art. 7014e-3. Disinfecting Shearing Plant and Apparel

Any person owning, controlling or having charge of any itinerant shearing plant or crew, or any person shearing sheep, or handling or packing the wool therefrom, which are infected with scabies, or located upon premises under quarantine for sheep scabies, who fails or refuses to disinfect the said shearing plant or any portion thereof, or his wearing apparel as required by law, shall be fined in any sum not less than one nor more than one hundred dollars.

[1925 P.C.]

#### Art. 7014e-4. Disinfecting Premises Quarantined

When any premises are placed under quarantine for sheep scabies infection it shall be the

duty of the owner, lessee or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep are closely confined in the following manner: All manure and litter shall first be removed and burned or buried, then the surface of such corrals, water lots, pens, sheds or other places where sheep are closely confined, with which sheep confined therein may come in contact shall be sprayed with a solution made of 6 oz. of 95 per cent carbolic acid to each gallon of water or a solution containing 4 oz. of cresol compound U.S.P. to each gallon of water, under the supervision of an authorized inspector of the Commission before any sheep which are not infected with scabies, or which have been dipped therefor, shall be permitted in such corrals, water lots, pens, sheds or other places where sheep are closely confined. Whoever violates the provisions of this article shall be fined not less than twenty-five nor more than fifty dollars.

[1925 P.C.]

#### Art. 7014e-5. Moving Stock With Scabies

No person, company or corporation shall drive, drift, haul by common carrier or private conveyance, or in any other manner transport along or across any public road or railroad, or on or across the lands or premises of another, any cattle or sheep which are infected with cattle or sheep scabies. Any person violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

#### Art. 7014f-1. Eradicating Diseases Among Livestock and Domestic Fowls

##### Duties of Live Stock Sanitary Commission

Sec. 1. It shall be the duty of the Live Stock Sanitary Commission provided in Article 7009 Revised Civil Statutes of 1925 to protect all cattle, horses, mules, asses, sheep, goats, hogs, and other live stock, and all domestic animals and domestic fowls of this State from infection, contagion or exposure to the infectious, contagious and communicable diseases enumerated in this Section, to-wit: Tuberculosis, anthrax, glanders, infectious abortion, hemorrhagic septicemia, hog cholera, Malta fever, foot and mouth disease, rabies and other similar and dissimilar contagious and infectious diseases of live stock recognized by the veterinary profession as infectious or contagious; also rabies among canines, and Bacillary White Diarrhea among fowls. Said Commission may at its discretion whenever it is deemed necessary or advisable also to engage in the eradication and control of any disease of any kind or character that affects animals, live stock, fowls, or canines regardless of whether said diseases are infectious, contagious or communicable and may establish necessary quarantines for said purpose. It shall be the duty of the Commission to establish quarantines

against other States, territories and foreign countries and portions thereof whenever said Commission ascertains or is informed that any of said diseases exist therein, and to establish quarantines within the State of Texas on cattle, horses, mules, asses, sheep, goats, hogs and other live stock, domestic animals and domestic fowls, also counties, districts, areas, premises, lands, pastures, lots, ranches, farms, fields, ranges, thoroughfares, buildings, barns, stables, stock yards, pens and other places whenever said Commission ascertains that any of said diseases or the agency of transmission thereof exist in any of said places or among any of said live stock, domestic animals or domestic fowls, or that any of said places, live stock, domestic animals or domestic fowls are exposed to any of said diseases or to the germs or agency of transmission of any of said diseases. Said Commission shall adopt rules and regulations to be proclaimed by the Governor of the State of Texas for the purpose of carrying out and enforcing the provisions of this Act. The said Commission is hereby authorized to control the sale and distribution of veterinary biologics. No provision of this Act shall relate to tick eradication; nor shall any provision hereof relate to scabies except those provisions in which scabies is expressly mentioned. When reference is made in any Section of this Act to infectious, contagious and communicable diseases, the same shall not be construed as having reference to scabies, unless said Section specifically states that scabies is included. It is hereby specifically provided that scabies eradication and tick eradication shall be conducted only by Inspectors of the Live Stock Sanitary Commission appointed and recognized by said Commission for said purposes, and all permits and certificates for certifying that cattle or sheep are free of scabies infection and exposure shall be issued only by Inspectors appointed for said purpose, and permits and certificates for certifying that live stock are free of ticks and exposure shall be issued only by Inspectors appointed for said purpose. Provisions of this with reference to issuing search warrants shall also apply to scabies inspectors for the purpose of dipping sheep or cattle under any law for eradicating scabies. Where cattle are quarantined on account of being tubercular reactors prosecutions for violations thereof shall be only under the penal clause for violating quarantines on tubercular reactors and no other penal clause of this Act shall apply. Wherever the word "person" is used in this Act the same shall also include firm and corporations.

#### Definitions

Sec. 1(a). The terms "livestock," "domestic animals," "domestic fowls," and specifically mentioned animals, when used in this Act, shall be construed to include the dead carcasses of such animals or fowls or parts thereof.

#### Exposure or Infection Considered as Continuing; Proof of Treatment by Other Than Authorized Person Inadmissible

Sec. 2. Whenever it is determined by Veterinarians in the employ of the Live Stock Sanitary Commission that any contagious, infectious or communicable disease exists among any live stock or domestic animals or domestic fowls, in the State of Texas, or on any land or premises or other places, or that any live stock, domestic animals or domestic fowls, premises or other places have been exposed or are exposed to the agency of transmission of any infectious, contagious or communicable disease, such exposure or infection shall be considered as continuing until the Live Stock Sanitary Commission has eradicated the same through its prescribed methods under authority of law and of the rules and regulations of the Live Stock Sanitary Commission. In the trial of any case involving the compliance or non-compliance of any owner or caretaker with any provision of law requiring the treatment, vaccination, dipping, disinfecting or other methods to be applied to live stock it shall not be permissible to prove that the same was done by any one except an authorized representative of said Commission. The provisions of this Section shall apply to any and all contagious, infectious and communicable diseases of live stock, domestic animals and domestic fowls, whether said diseases are mentioned in this Act or not, and said provisions shall also include scabies infection and exposure among cattle, sheep, and goats, when a scabies inspector of said Commission determines the existence of scabies infection or exposure thereto.

#### Notice of Quarantines

Sec. 3. Notice of quarantines established by the Live Stock Sanitary Commission shall be given in the following manner: Notice of quarantines against other states, territories and foreign countries, or any part thereof, shall be given by publishing a brief statement thereof in a newspaper published in the State of Texas and said quarantine shall become and be in effect on and after the time of said publication. The expense of said publication shall be paid out of any appropriation made for office and stationery expenses of the Live Stock Sanitary Commission. Notice of quarantines established within the State of Texas shall be given either by publishing a brief statement thereof in a newspaper published in the County in which said quarantine is established or by posting said brief statement giving notice of said quarantine at the Court House door of said county or by delivering a written notice of said quarantine to the owner or caretaker or person in charge of the live stock, domestic animals, domestic fowls, or the lands, premises or other place to be quarantined. When a quarantine is established on any lands, premises or other place the same shall also quarantine all live stock, domestic animals or domestic fowls of the kind mentioned in said quarantine notice

whether or not said live stock, animals or fowls are owned or controlled by the person who owns and has control of the land or other place, and said quarantine shall include all such live stock, domestic animals or domestic fowls owned by any person, if the said live stock, domestic animals or domestic fowls shall be upon or enter upon said quarantined premises, lands or other quarantined places during the existence of said quarantine. The expense of publishing or posting notice of any quarantine established within the State of Texas may be paid out of any appropriation made by the Legislature for office and stationery expenses of the Live Stock Sanitary Commission or out of any appropriation made by the Legislature for the eradication or control of contagious, infectious or communicable diseases of live stock; or the County Commissioners' Court in counties in which said quarantines are established may provide funds for publishing or posting said notices out of the general funds of said counties or out of any other available funds of said counties. All quarantine notices shall state the requirements and restrictions under which live stock may be permitted to enter the State of Texas or to be moved from any quarantined places; or if the seriousness of the disease is such that movements of such live stock shall not be permitted, then and in that event said quarantine shall state this fact.

**Removal or Transportation of Animals From Quarantine Area Unlawful**

Sec. 4. Any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry, or in any manner move or transport any cattle, horses, mules, asses, sheep, goats, hogs or other live stock, domestic animals or domestic fowls from any county, district, area, premises, pasture, lot, pen, yard, stockyard, field, barn, stable, building, enclosure, or other place which is under quarantine under any provision of this Act, or any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry or in any manner transport or move any of said live stock, domestic animals, or domestic fowls which are under quarantine under any provision of this Act from any county, district, area, premise, pasture, lot, pen, yard, stockyard, field, barn, stable, enclosure, building, or other place in which or upon which said live stock, animals or fowls are quarantined; or any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry or in any manner transport or move any cattle, horses, mules, asses, sheep, goats, hogs or other live stock, domestic animals or domestic fowls into the State of Texas from any State, territory or foreign country against which a quarantine is established by the Live Stock Sanitary Commission under any provision of this Act, or from any quarantined part of any State, territory, or foreign country against which a quarantine is established by the Live Stock Sanitary Commission under any provision of this Act, shall be fined not less than Twenty-Five Dollars per head nor more than One Hundred

Dollars per head for each head of such live stock, domestic animals or domestic fowls which are shipped, driven, drifted, led, hauled, trucked, carried or in any manner transported or moved by said person, firm or corporation in violation of said quarantine, unless said live stock, domestic animals or domestic fowls are accompanied by a written certificate or written permit from the Live Stock Sanitary Commission of Texas or a written certificate or written permit from a veterinarian or other representative authorized by said Commission to issue the same. The said certificate or permit shall be issued in conformity with the requirement stated in the quarantine notice and the same shall be issued by some one of the class of persons authorized for such purpose by said Commission in said quarantine notice. Quarantine notices shall state for what cause said quarantines are established, whether on account of infection or exposure. It shall not be necessary to describe in said notices the land or territory or premises by metes and bounds or other measures, but it will be sufficient if the said quarantine notice makes such reference to the land, territory or premises and the location thereof to reasonably identify the same. The provisions of this Section with reference to the quarantining against other States, and foreign countries and portions thereof, and assessing a penalty for the violation of same, shall apply to quarantines established on account of the diseases mentioned and referred to in this Act, and also to scabies among cattle, whenever said quarantine is established on account of said scabies, but where a quarantine is established on account of scabies among cattle, the issuance of certificates and permits for the movement of cattle which are subject to said quarantine shall be only by scabies inspectors recognized for such purpose by the Live Stock Sanitary Commission of Texas, in said quarantine notice.

**Regulation of Movement of Commodities or Disease Carriers**

Sec. 5. The Commission may establish necessary quarantines for prohibiting or regulating the movement of any commodity or article, livestock, animals or fowls that the said Commission may designate to be carriers of any of the diseases mentioned in this Act, as amended, or that the Commission may designate as potential carriers if movement is not otherwise regulated or prohibited, whenever any of said diseases or exposure thereto exist in the nation, State, territory or area to be quarantined. In the quarantine notice the Commission may prescribe any exceptions, terms, conditions, or provisions it believes necessary or desirable to promote the objectives of this Act or to minimize the economic impact of the quarantine without endangering the objectives of this Act and the public health and safety. Any person, firm or corporation who shall violate said quarantine by in any manner moving any of said designated commodity or article, livestock, animals or fowls into the State of Texas from

any state, foreign nation, territory or area, or who shall in any manner move any of said designated commodity or article, livestock, animals or fowls from any territory, county, district, or place in the State of Texas quarantined by said Commission shall be fined not less than \$25.00 nor more than \$100.00 for each of said movements or shipments unless said movement or shipment is accompanied by a written permit or certificate provided for in said quarantine notice.

Entry Into Public or Private Property in Exercise  
of Authority

Sec. 6. The Chief Veterinarian of the Live Stock Sanitary Commission and all other veterinarians employed by said Commission, including members of said Commission, are hereby authorized to enter any public or private property for the exercise of any authority or performance of any duty authorized under this Act. If said person desires to be accompanied by a peace officer the said person may apply to any magistrate in the County wherein said property is located for the issuance of a search warrant, and it shall be the duty of the said magistrate to issue the same, but no such search warrant shall issue without describing as near as may be the premise or other place to be entered; nor without probable cause, supported by oath or affirmation. It shall not be necessary to describe said premises or place by field notes or metes and bounds, or other measures, but it will be sufficient if the search warrant contains such reasonable description as will enable the owner or caretaker of said property to know just what property is referred to therein. When said search warrant is issued it will authorize the person to whom it is issued to be accompanied by peace officers, and said search warrant will authorize the person to whom it is issued to be also accompanied by as many helpers and assistants as he may deem necessary for the performance of said duty or the exercise of said authority. Any person, firm or corporation who shall refuse to permit any person to whom said search warrant is issued to make said entry or to perform any duty or exercise any authority designated in said search warrant under authority of this Act, or who shall refuse to permit any peace officer or any helper or any assistant to said person to whom said search warrant is issued to make said entry or to exercise any authority or perform any duty designated in said search warrant under authority of this Act shall be fined not less than Twenty-five nor more than One Hundred Dollars. Each separate day upon which said refusal is made during the thirty days next succeeding the date of the issuance of said search warrant shall constitute a separate offense. Said search warrant shall permit the entry and re-entry and the performance of said duties and exercise of said authority continuously for a period of thirty days after its issuance, and additional search warrants may be issued thereafter under the provisions of this Act as often

as same may be necessary. It is further provided that it shall not be necessary for veterinarians, inspectors or members of said Commission to secure said search warrants, unless they are to be accompanied by peace officers, but they are hereby authorized to make entries upon private and public lands for the performance of any duties authorized under this Act. Search warrants may also be issued to inspectors of the Live Stock Sanitary Commission engaged in the eradication of scabies among sheep, goats and cattle, whenever said inspectors are to be accompanied by peace officers in the performance of any duties in connection with said work.

Persons Liable

Sec. 7. For all purposes of this Act, it shall be construed that any person, firm or corporation who is owner, lessee, renter or tenant of premises, pens, pastures or other places is the caretaker of and has control of all cattle, horses, mules, asses, sheep, goats, hogs and other live stock, domestic animals or domestic fowls, located thereon or therein, and subject to prosecution under provisions of this Act, penalizing owners or caretakers, whether he owns such live stock or not; provided that this shall not be construed as limiting the care and control of such mentioned live stock, animals and fowls to said owner, lessee, renter or tenant of said land, but any other person who exercises any care or control over such live stock, animals or fowls and also the actual owner of same shall also be held liable under provisions of this Act penalizing owners and caretakers for violation. Owners of land, pastures, premises and other places shall not be considered caretakers of live stock thereon if some other person has control of said premises by virtue of any lease or rental contract, or by some other authority, unless the owner of said premises is also owner of the said live stock, domestic animals or domestic fowls located thereon, nor shall a tenant of premises be considered a caretaker of live stock, domestic animals or domestic fowls thereon unless said tenant has control of said premises or said live stock, domestic animals or domestic fowls.

Commissioners' Court to Cooperate With Commission

Sec. 8. It shall be the duty of the County Commissioners' Courts of this State to cooperate with and assist the Live Stock Sanitary Commission in protecting the live stock, domestic animals and domestic fowls of their respective counties from all contagious, infectious and communicable diseases, whether such diseases exist within or outside of the county, and said Commissioners' Courts are hereby authorized to employ a veterinarian at the expense of the county, said veterinarian to be approved by the Live Stock Sanitary Commission.

Health Certificate for Foreign Shipments  
Into Any County

Sec. 9. It shall be unlawful for any person, firm or corporation to ship, drive, drift, haul, lead or otherwise move from any state, territo-

ry or foreign country into any county in the State of Texas, or for any railroad company or other common carrier to haul, ship, or transport into any county in the State of Texas from any state, territory or foreign country, any cattle (except steers and spayed heifers), horses, mules, asses, sheep, goats, hogs, domestic animals or domestic fowls, except as herein-after provided, unless the same are accompanied by a health certificate issued by a veterinarian authorized by or recognized by the Texas Animal Health Commission on a health certificate form prescribed in the rules and regulations of said Commission. The said Commission shall provide in its rules and regulations for authorizing and recognizing veterinarians of this state and of other states and Departments of the United States Government, and no veterinarian shall be considered as recognized or authorized by said Commission, except as provided therein. The said certificate shall show that said livestock, domestic animals, and domestic fowls were inspected by said veterinarian sometime within the preceding ten days before they entered the State of Texas, and that he found them to be free of all infectious and contagious diseases, as such are determined by the Texas Animal Health Commission to be dangerous to livestock, and that said animals were subjected to such tests, immunizations, and treatment as required under regulations adopted by said Commission. Any person, firm or corporation that shall ship, drive, drift, haul, lead or otherwise move into the State of Texas, or any railway or other common carrier that shall haul, ship, or transport into the State of Texas, any cattle (except steers and spayed heifers), horses, mules, asses, sheep, goats, hogs, domestic animals or domestic fowls, in violation hereof without the same being accompanied by said certificate shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each head of livestock and for each domestic animal or domestic fowl which said person, firm or corporation, railway or other common carrier ships, hauls, drives, drifts, transports, leads, or otherwise moves into the State of Texas in violation hereof. Cattle and sheep and hogs billed and shipped for immediate slaughter purposes shall be admitted into the State of Texas without certification, treatment, vaccination or testing.

#### Rules and Regulations for Shipment

Sec. 10. Livestock shall not be considered as billed or shipped or intended for immediate slaughter purposes unless they are handled as provided in the rules and regulations of the Texas Animal Health Commission and accompanied by a written statement of this fact shown on the waybill, or bill of lading, express shipping papers, or if hauled by trucks or other vehicles the driver shall have in his possession a written statement of this fact.

#### Specific Health Requirements; Brucellosis Agglutination Tests; Exemptions; Tuberculin Testing; Permits; Violations

Sec. 11. All livestock brought into the state shall be accompanied by an official health certificate stating that the animals are free from symptoms of infectious, contagious, and communicable diseases, and shall meet the specific health requirements as stated in this regulation.

All cattle except cattle exempt from testing in accordance with the rules and regulations of the Texas Animal Health Commission, over eight (8) months of age shall be required to show a negative brucellosis agglutination test within thirty (30) days prior to date of shipment. The following are exempt from this requirement:

1. Official calfhood vaccinated cattle under thirty (30) months of age;
2. Cattle originating from a certified brucellosis-free herd;
3. Cattle originating from a negative, non-quarantined herd, and a modified certified free area;
4. Steers and spayed heifers;
5. Cattle consigned to federally recognized slaughter establishments for immediate slaughter; approved livestock auction markets; and public stockyards; and approved feedlots.

Under no circumstances shall cattle originating in herds quarantined for any disease enter Texas. Any health certificate required herein shall be issued by a veterinarian recognized by the Texas Animal Health Commission. The Texas Animal Health Commission, in regulations adopted by said Commission, may prescribe the manner and method of tuberculin testing prior to entry into Texas and provide for permits to be secured authorizing said brucellosis and tuberculin tests to be conducted after arrival of cattle into Texas.

Any person, firm, corporation, railway or other transportation company that shall ship, drive, drift, haul, transport or otherwise move into the State of Texas any cattle in violation hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than Twenty-five Dollars (\$25.00) per head nor more than One Hundred Dollars (\$100.00) per head for cattle shipped, driven, drifted, hauled, transported or otherwise moved into the State of Texas by said person, firm, corporation, railway or other transportation company in violation hereof.

#### Regulation of Hog Shipments

Sec. 12. Any person, firm or corporation that shall ship, drive, drift, haul, truck or otherwise transport into the State of Texas any hogs, except hogs shipped for immediate slaughter in accordance with the rules and regulations of the Live Stock Sanitary Commission, unless the certificate accompanying said hogs as prescribed in this Act, certifies that

the veterinarian who issued same vaccinated said hogs and dipped them in a two per cent solution of cresol compound USP, prescribed in the Rules and Regulations of said Commission, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum of not less than \$25.00 per head nor more than \$100.00 per head for each head of hogs shipped, driven, drifted, hauled, trucked or transported or otherwise moved by said person, firm or corporation into the State of Texas in violation hereof. Any railway company or other common carrier who shall haul, ship or transport into the State of Texas any hogs, except said immediate slaughter hogs, unless the same are accompanied by the said certificate bearing the said certification showing said vaccination and dipping, shall be deemed guilty of violating the provisions of this Section and shall be punished as herein prescribed. Provided that a certificate certifying that hogs have been vaccinated by the use of serum alone, shall become void at the expiration of thirty days after such treatment; and where hogs are accompanied by a certificate showing said hogs to have been vaccinated with the use of virus any time within the preceding thirty days or to have been vaccinated with serum alone more than thirty days previous to the said entry into Texas, the said hogs shall for all purposes of this Act be considered as not being accompanied by a certificate certifying vaccination, and the person, railway company or other common carrier who shall ship, drive, haul or otherwise transport such hogs accompanied by said invalid or void certificate, shall be considered as having violated the provisions of this Section.

**Shipments Into State Subject to Brucellosis and  
Tuberculosis Testing**

Sec. 13. All cattle, regardless of age, except steers, spayed heifers, and cattle shipped for immediate slaughter and such other cattle as may be exempt under regulations adopted by the Texas Animal Health Commission, which enter the State of Texas are subject to testing for brucellosis and tuberculosis by a veterinarian authorized in writing by the Texas Animal Health Commission, after their arrival in Texas, irrespective of whether said cattle were accompanied by the test chart prescribed in this Act, which test shall be made at the discretion of the Texas Animal Health Commission at any time within ninety (90) days after the said cattle enter the State of Texas. For the purpose of carrying out the provisions of this Section the said Commission or its Chairman may establish such restrictions or quarantines on said cattle as may be necessary, to insure their being retested as herein prescribed, provided that the Texas Animal Health Commission shall not adopt any regulations requiring tuberculin tests prior to entry into this state of grade cattle of beef breeds originating in non-quarantined herds in Modified Accredited Tuberculosis Free Areas.

**Cattle Showing Positive Reaction to Tuberculosis  
Test as Public Nuisance**

Sec. 14. All cattle that show a positive reaction when tested for tuberculosis by a veterinarian recognized by the Live Stock Sanitary Commission for the performance of such testing are hereby declared to be a public nuisance and a menace to the health of other live stock with consequent and serious danger to human life and health. It shall be the duty of said veterinarian to brand or have branded all of said positive reactors "T" on the left jaw with a hot iron, which letter "T" shall be not less than three inches high. Said veterinarian shall immediately notify the Live Stock Sanitary Commission of the location, description and number of said reactors and it shall be the duty of said Commission to immediately quarantine the said reactors and the premises upon which they are located. Any person, firm, or corporation who shall sell, trade, barter, give away, or loan, or drive, drift, ship, haul, lead, truck, or in any manner move, before the Live Stock Sanitary Commission has established a quarantine on said positive reactors, any of said positive reactors from the enclosure wherein they were located at the time they were so tested, or that shall so move any of said reactors from the place or enclosure where they are under quarantine by said Commission or that shall so move any cattle located in said quarantined place or enclosure during the existence of said quarantine without first securing a written permit from the said Commission shall be fined not less than \$100.00 per head nor more than \$500.00 per head for each head of said positive reactors which the said person, firm or corporation shall sell, trade, barter, give or loan, or shall drive, ship, haul, lead, truck, or in any manner move in violation of any provision of this Section without first receiving said permit as aforesaid.

**Veterinarians' Records Filed With Commission**

Sec. 15. It shall be the duty of all veterinarians in the State of Texas to file for record with the Live Stock Sanitary Commission a test certificate upon the form prescribed by the Live Stock Sanitary Commission on all tuberculin tests on cattle, hogs or fowls, showing name of owner, post office address, location of premises and animals or fowls, date of test, identification of animals or fowls, kind of test conducted, result of test, and whether interstate, accredited herd, municipal, or private test, which test certificate shall be transmitted to said Commission for record with the said Commission within two days after date of finishing such test; said veterinarians shall also file with said Commission for record a certificate of vaccination upon forms prescribed by said Commission of all hogs vaccinated by them, showing name of owner, post office address, location of premises, number of hogs, amount and serial number of the serum and virus used or other biologics used, the same to be transmitted for recording within forty-eight

hours after the performance of said vaccination; veterinarians shall upon pronouncing any animal as infected with tuberculosis as evidenced by tuberculin test conducted by him or by clinical examination or by the results of laboratory examination, brand such animal as prescribed in this Act, and shall also affix on the left ear a metal ear tag bearing a number for identification of said animal and shall transmit notice of said tagging and branding to the Live Stock Sanitary Commission within forty-eight hours of the performance thereof. Any veterinarian violating any provision of this Section shall be fined not less than \$25.00 nor more than \$200.00 for each violation.

**Regulations as to Entry in Exhibitions and Movements From Stockyards**

Sec. 16. The Live Stock Sanitary Commission is hereby authorized, whenever said Commission deems it necessary, to regulate the entry into exhibitions, shows and fairs, of all live stock, domestic animals or domestic fowls and to require such treatment and certification as may be reasonably necessary as protection against infectious, contagious and communicable diseases; also to regulate the movement of live stock out of stock yards or railway shipping pens when necessary, and require such treatment and certification as may be reasonably necessary as a protection against contagious, infectious and communicable diseases. Any person, firm or corporation who shall enter any live stock, domestic animals, or domestic fowls into any show, fair, or exhibition, or upon the grounds thereof for said purpose; or who shall remove any live stock from any stock yards or railway shipping pens without a certificate as required in any regulation adopted by said Commission under authority of this Section, shall be fined not less than \$25.00 per head nor more than \$100.00 per head for each head of said live stock, or for each domestic animal or domestic fowl which is entered in said show, fair, or exhibition, or said grounds for said purpose, or from said stock yards or railway shipping pens. Owners and persons in charge of fairs, shows and exhibitions, stock yards and railway shipping pens shall also be liable under this Act for such movement and fined as herein provided whenever they permit or allow the same.

**Definitions**

Sec. 17. The words "accompany" and "accompanied" as used in this Act with reference to certificates and permits shall be construed to mean that said certificates or permits are in the possession of the conductor of the train and attached to the waybill of the shipment of the live stock which are shipped by rail, or in possession of the person in charge of the said live stock, if the movement is made otherwise than by rail.

**Penalty**

Sec. 18. Any person who is the owner or caretaker of any live stock, canines or fowls or of any disease carrier designated in this Act or

designated by the Live Stock Sanitary Commission under authority of this Act who permits any other person to ship, drive, drift, lead, haul or otherwise move any of said live stock, canines or fowls, or disease carrier in violation of any quarantine established under provisions of this Act by the Live Stock Sanitary Commission or in violation of any provision of this Act shall be deemed guilty of a misdemeanor for permitting such movement, and upon conviction thereof shall be fined in any sum that is prescribed for punishing the person who ships, drives, drifts, leads, hauls, or otherwise moves said canines, fowls or live stock, or disease carrier.

**County Attorney to Prosecute Carriers or Corporations for Violations**

Sec. 19. Whenever any railroad company or other common carrier or corporation violates any provision of this Act, it shall be the duty of the County Attorney of the county in which said violation occurs to file and prosecute a civil suit on behalf of the State of Texas in the Civil Court of proper jurisdiction against said railway company or other common carrier or corporation.

**County Judge to Appoint Appraisers of Affected Animals; Destruction**

Sec. 20. It shall be the duty of the County Judge of any county in this State whenever any horse, mule, or ass in their respective county is found affected with glanders and has been quarantined by the Live Stock Sanitary Commission to appoint three disinterested parties to act as appraisers and fix the value of said animal, and report said appraisement to the said County Judge; whereupon the Commissioners' Court of said County shall pass upon said written report and pay to the owner of said animal the appraised value. The County Judge upon receipt of the report from the appraisers shall issue an order to the sheriff, deputy sheriff or constable of said county commanding him to seize said diseased animal and take it to some secluded spot or place and kill it and burn the carcass until thoroughly consumed. The said appraisers and officers shall be paid reasonable compensation for their services, out of funds provided by the County Commissioners' Court under the same provisions authorized by this Act for other expenditures by County Commissioners' Courts.

**Disposition of Animals Dying of Infection**

Sec. 21. It shall be the duty of any person owning, controlling or caring for any live stock which die with any of the contagious or infectious diseases mentioned in this Act or that own or control the land upon which said live stock die, or upon which its carcass is found, to bury the carcass of said animal, by digging a grave not less than five (5) feet deep, placing the carcass therein, covering it with lime and then filling the grave with dirt; or to burn said carcass with fire, until it is thoroughly consumed. Any person owning, controlling or caring for any live stock which die with any of

the said contagious or infectious diseases or who owns or controls the land upon which said live stock dies or upon which its carcass is found who shall fail to bury or burn within twenty-four hours after the said animals die, the said carcass as herein prescribed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than \$25.00 nor more than \$100.00, for each of said animals.

Cooperation With United States Department of Agriculture; Tuberculin Testing

Sec. 22. (1) The Livestock Sanitary Commission is hereby authorized to cooperate with the United States Department of Agriculture and with County Commissioners Courts of this State, and it is hereby made the duty of County Commissioners Courts to cooperate with said Commission and the United States Department of Agriculture as hereinafter provided for the eradication of tuberculosis among cattle, under the provisions of this Act and of the rules and regulations of said Commission as herein provided for the purpose of the establishment of modified accredited areas in the State of Texas. The said County Commissioners Courts may at their discretion cooperate with said Commission and the United States Department of Agriculture, but it shall be the duty of said County Commissioners Courts to so cooperate upon the filing with said County Commissioners Courts of a petition signed by at least seventy-five per cent (75%) of the owners of cattle in the county as shown by the tax rolls of said county. The Livestock Sanitary Commission shall provide in its rules and regulations the manner, method and system of testing cattle for tuberculosis in said cooperative tuberculosis eradication work. The owners of cattle which have shown a positive reaction to the tuberculin test in said cooperative tuberculosis eradication work shall sell such reactors under the direction of said Commission for immediate slaughter at public slaughtering establishments where Federal postmortem inspection is maintained; or said Commission may authorize said slaughter upon the owner's property or other place under the direction of said Commission. After such sale and slaughter the Livestock Sanitary Commission is authorized to pay such owners out of funds appropriated by the Legislature for that purpose an amount not to exceed one-third ( $\frac{1}{3}$ ) of the appraised value of such reactors after deducting the amount of salvage received for same. In no case shall any compensation be made by the State for more than Thirty-five Dollars (\$35.00) for any grade animal or more than Seventy Dollars (\$70.00) for any purebred animal; nor shall any of such payment be made until said owner complies with the rules and regulations of said Commission; nor shall any compensation be made in excess of the amount of compensation paid said owner for said reactors by the United States Department of Agriculture. The value of said animal shall be appraised by a representative of said Commission or of said United

States Department of Agriculture and a representative of the owner of said livestock, and if they cannot agree, then a third appraiser shall be appointed by these two appraisers and then the value shall be appraised by the agreement of any two of said three appraisers. It shall be unlawful for any positive reactors to the tuberculin test, regardless of whether said animals were tested in said cooperative tuberculosis eradication work to be slaughtered or otherwise disposed of except under the direction of the Livestock Sanitary Commission, and any person who kills or destroys or removes the carcass of any positive reactor from the place where the same is under quarantine or the place whereon said animal was tested, shall be fined the same as if he had violated the quarantine of said positive reactors under this Act.

(2) When the Livestock Sanitary Commission is conducting tuberculin tests in any county, in cooperation with the United States Department of Agriculture, for the purpose of maintaining this State and each county thereof as a Modified Accredited Tuberculosis Free Area, under the terms of uniform methods and rules of the United States Department of Agriculture, adopted by the Livestock Sanitary Commission of Texas, said Commission or its authorized representative is hereby authorized to examine, test and retest any and all cattle in this State, as may be required, to maintain the status of each county as a Modified Accredited Tuberculosis Free Area.

(3) Any herd, or herds, of cattle, or parts of herds in Modified Accredited Tuberculosis Free Areas, or any other area, shall be tested or retested at such intervals as may be deemed advisable or necessary by the Livestock Sanitary Commission to control and eliminate bovine tuberculosis.

(4) It shall be the duty of every owner, part owner or caretaker to assemble and submit his cattle for examination and tuberculin test when directed in writing by the Livestock Sanitary Commission or its authorized representative. Said notice, fixing the date and approximate time cattle are to be tested, shall be delivered by registered mail, to owner, part owner or caretaker ten (10) days prior to the date cattle are to be assembled for test.

(5) Such owners, part owners or caretakers shall provide reasonable assistance in confining their cattle and providing facilities in order that tuberculin tests may be properly administered to cattle to be tested. It shall also be their duty to return for observation the same cattle, at the same place and at a time designated by the Livestock Sanitary Commission or its representative.

(6) Owners, part owners or caretakers who fail or refuse to assemble cattle or to provide reasonable assistance and facilities for the tuberculin testing or observation of the results of such tests, at time and place directed in writing by said Commission, shall be fined not less than Twenty-five Dollars (\$25) nor more than

Two Hundred Dollars (\$200), and each day of failure or refusal shall be a separate offense.

(6a) No funds shall be paid to owner for slaughtered cattle except as provided in the General Appropriation Bill, it being the intention of the Legislature that no claims for reimbursement shall be made except those funds in the General Appropriation Bill.

Diseases of Swine; Testing; Slaughter of Infected Swine; Payments to owners; Feeding Garbage to Swine; Inspections

Sec. 22a. (1) The Texas Animal Health Commission is hereby authorized to cooperate with the United States Department of Agriculture, for the eradication of vesicular exanthema, foot and mouth disease of swine, hog cholera, and other diseases of swine.

(2) The Commission shall provide in its rules and regulations the manner, method and system of eradicating such diseases in this state; provided, that such rules and regulations shall not exceed those imposed by the Minimum Standards for Cooperative Programs promulgated by the Animal and Plant Health Service, United States Department of Agriculture. Before adopting these rules and regulations or any amendment or repeal of them, the Commission shall hold a public hearing preceded by publication of notice in at least three newspapers having general statewide circulation at least thirty (30) days before the date of the hearing. The notice shall state the substance of the proposed rules and regulations, or of the amendments or repeals, and the place, date, and time of the hearing.

(3) It shall be the duty of the Texas Animal Health Commission to provide applicable rules and regulations for the use of biologicals as a protection against dissemination of contagious, infectious, or communicable swine diseases.

(4) The Commission shall have the authority to order swine infected with, or exposed to, vesicular exanthema, foot and mouth disease, hog cholera and other diseases of swine to be sold for immediate slaughter at public slaughtering establishments where federal post mortem inspection is maintained; or the Commission may authorize such slaughter upon the owner's property, premises or other place under the direction of said Commission. Provided however, the owner shall have the right to appeal such order by the Commission, to the County Court, in the county where such swine are located.

(5) After such sale and slaughter of swine infected with or exposed to vesicular exanthema, foot and mouth disease, and hog cholera, the Commission is authorized to pay the owner of such swine out of funds appropriated by the Legislature for that purpose in an amount not to exceed fifty per cent (50%) of the appraised value of such animals after deducting the amount of salvage received for them by the owner. No payment shall be made unless the owner or owners of such swine have complied with Subsection (7) of this Section and the

rules and regulations of the Texas Animal Health Commission applicable to the particular swine for which payment is made, nor shall any compensation be paid in excess of the amount of compensation paid such owner for such swine by the United States Department of Agriculture.

(6) The value of such animals shall be appraised by a representative of the Commission or of the United States Department of Agriculture, and a representative of the owner or owners thereof. If they cannot agree, then a third appraiser shall be appointed by these two appraisers, and the value is that amount agreed to by two of the three appraisers. If either party is not satisfied with the value as appraised, he shall have the right to appeal to the court having jurisdiction of the amount in controversy in the county of the residence of the owner. The trial shall be de novo as that term is used in appeals from the justice court to the county court.

(7) It shall be unlawful for any person to feed garbage to swine unless such garbage has been heated to a temperature of 212 degrees Fahrenheit (boiling point) for a period of thirty (30) consecutive minutes within forty-eight (48) hours prior to such feeding. This subsection does not apply to an individual who feeds to his own swine the garbage from his own household, farm, or ranch.

(7a) After January 1, 1970, it is unlawful for any person to feed garbage to swine without first registering with the Commission on a form prescribed by the Commission and securing a permit. The Commission shall furnish registration forms on request. This subsection does not apply to an individual who feeds to his own swine the garbage from his own household, farm, or ranch.

(8) The term "garbage" includes all of the refuse matter, animal or vegetable, and all putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods containing animal carcasses or parts thereof, and all waste material by-products of a restaurant, kitchen, cookery, or slaughter house, and every refuse accumulation of animal or vegetable matter, liquid or otherwise.

(9) The term "person" means and includes any individual, firm, corporation, partnership, association and any other entity.

(10) Representatives of the Commission, including the members of the Commission, may enter upon the premises of any person for the purpose of making inspections of swine and of the heating or cooking equipment required under this Section, or to perform any other duty provided in this Section. No person may refuse to permit an inspection authorized under this Section.

(11) The Commission shall provide rules and regulations for the enforcement of this Section.

(12) A person who violates any provision of this Section or any rule or regulation of the Commission authorized by this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200, and each day of violation shall constitute a separate offense.

Sec. 22b. Combined with Section 22a.

Chief Veterinarian, Assistant and Other Employees

Sec. 23. The Livestock Sanitary Commission is hereby authorized to employ a Chief Veterinarian, a first assistant and as many Assistant Veterinarians as may be necessary; also, such other persons as may be necessary for the enforcement of the provisions of this Act, and other Live Stock Sanitary Acts; also, clerks, stenographers, chief clerk and all necessary clerical help.

Control and Eradication of Bovine Brucellosis

Sec. 23A. (1) Purpose. It is the purpose of this Section to bring about the effective control and eventual eradication of bovine brucellosis in the State of Texas and to accomplish that purpose in the most effective, practical, and expeditious manner.

(2) The Livestock Sanitary Commission of Texas may enter into cooperative agreements with the United States Department of Agriculture for the control and eradication of bovine brucellosis in Texas.

(3) The Livestock Sanitary Commission of Texas, in cooperation with the United States Department of Agriculture, is hereby authorized to engage in area or county programs for the control and eradication of bovine brucellosis to the end that all the area of this State may eventually become a modified certified brucellosis free area.

(4) When seventy-five per cent (75%) of the cattle owners in any area or county in this State, as reflected on the current tax rolls, owning at least fifty-one per cent (51%) of the cattle within that affected area or county, as reflected by said tax rolls, shall petition the Livestock Sanitary Commission of Texas to have such area or county designated as a modified certified brucellosis free area, the Livestock Sanitary Commission, of Texas may declare that county or area to be a brucellosis control area. If such area follows county boundary lines it shall be designated as a "County Brucellosis Control Area," the name of the county identifying the area.

(4a) Regardless of any other provision of this section, the Commission, on a finding that at least 75 percent of the cattle owners of the State, as reflected on the current tax rolls, owning at least 51 percent of the cattle within the State, have petitioned the Commission for establishment of Type II brucellosis control areas under this Section 23A, may designate any county or area as a Type II control area if it has not already been so designated.

(5) In the event that, for any valid reasons, the Livestock Sanitary Commission of Texas

should decide that conditions within and surrounding the county originating such petition make it impractical to operate a brucellosis control area within the boundaries of such county, then the Texas Livestock Sanitary Commission is authorized to add additional territory to such county area in reasonable amount or to eliminate part of such county area in reasonable amount, and to establish the boundary of such control area along practical and reasonable lines, provided that, before such control area can be established it must be determined that at least seventy-five per cent (75%) of the cattle owners within the boundaries of the area so established, owning at least fifty-one per cent (51%) of the cattle within that area, request the Texas Livestock Sanitary Commission to have such area designated as a modified, certified brucellosis free area. When an area not following county boundary lines is established as a brucellosis control area by the Texas Livestock Sanitary Commission such area shall be designated as "Special Brucellosis Control Area."

(6) In order to establish and designate an area, either County or Special, as a brucellosis control area, the Texas Livestock Sanitary Commission shall issue a proclamation describing the area by boundaries. Said proclamation shall state that said area is designated and established as a "Brucellosis Control Area," either County or Special, and state the date upon which brucellosis control work shall start within that area, which date shall be not less than ninety (90) days after the date of such proclamation. Such proclamation shall be publicized by posting copies thereof in at least three (3) public places within the affected area and at the door of the courthouse of the county seat or seats of the county or counties affected, which posting shall be made at least ninety (90) days before the effective date of the proclamation.

Said proclamation shall also fix the date, which shall be not less than thirty (30) days after the date of the proclamation, at which time a hearing will be had in the office of the Livestock Sanitary Commission of Texas, at which hearing any person owning cattle within the affected area who desires to protest the designation and establishment of the control area shall have the right to appear, either in person or by representative or both, and there express to the Livestock Sanitary Commission his views and opinions as to why such brucellosis control area should not be designated and established. Within ten (10) days after such hearing the Commission shall issue a statement showing its decision upon the question of whether or not such control area shall be designated and established and such decision by the Livestock Sanitary Commission shall be final.

(7) Two (2) types of brucellosis control areas may be established. These types are:

I. An area in which no testing shall be required but in which all female calves

shall be required to be officially vaccinated within ages fixed by regulation of the Texas Livestock Sanitary Commission and in compliance with the regulations of such Commission relating to vaccination.

II. An area in which such tests, vaccinations, identifying practices, quarantines, disposition of infected animals and other practices as provided by regulations of the Texas Livestock Sanitary Commission shall be followed.

The petition of the cattle owners constituting the basis for the proclamation establishing the brucellosis control area shall state which type, "I" or "II", control area is desired in the affected area and the proclamation establishing the control area shall designate which type, "I" or "II," is established. No type control shall be established unless that type has been properly requested.

(8) "Type I" Control Area

After the effective date of the proclamation establishing an area, either County or Special, as a "Type I" brucellosis control area, it shall be the duty of all cattle owners owning cattle within the area to, at their own expense, have all female calves owned by them officially vaccinated for brucellosis in accordance with the applicable regulations issued by the Texas Livestock Sanitary Commission. Failure on the part of any person owning cattle within the designated area to have female calves owned by him so vaccinated in accordance with said regulations shall constitute a misdemeanor and upon conviction shall be punished by a fine of not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100), and each female calf owned by such person that is not so vaccinated in compliance with such regulations shall constitute a separate offense.

(9) "Type II" Control Area

Whenever the Livestock Sanitary Commission of Texas shall designate and establish an area, either County or Special, as a "Type II" brucellosis control area, the Livestock Sanitary Commission shall proceed to conduct such tests, vaccinations and other practices, and to enforce such rules and regulations as may be necessary to qualify said county for certification or recertification as a modified certified brucellosis free area as outlined in the uniform regulations of the United States Department of Agriculture and the Livestock Sanitary Commission of Texas. An area may be certified as a brucellosis free area when not more than one per cent (1%) of the cattle and not more than five per cent (5%) of the herds are positive to the official brucellosis agglutination test, exclusive of officially vaccinated animals under thirty (30) months of age, calves under six (6) months of age, steers and spayed heifers.

(10) The Livestock Sanitary Commission of Texas is prohibited from adopting any regulation dealing with brucellosis that would prohibit or interfere with the free movement of officially vaccinated calves from unquarantined herds under thirty (30) months of age within the State of Texas.

tinued herds under thirty (30) months of age within the State of Texas.

(10a) The Texas Animal Health Commission shall provide a brucellosis milk ring test (BRT) as an alternate test for any owner, part owners or caretakers of cattle to certify or recertify such cattle to be free of bovine brucellosis. Any owner, part owners or caretakers adopting this alternate method to certify or recertify such cattle to be free of bovine brucellosis shall be required to submit such cattle for a brucellosis milk ring test (BRT) and such cattle shall pass three (3) successive negative tests at intervals of not less than three (3) nor more than four (4) months apart during the period of a year.

If any one of the three (3) brucellosis milk ring tests (BRT) results, conducted annually, is positive and indicates a reactor or reactors may be present in a herd, within ten (10) days after receipt of notice by any owner, part owners or caretakers, a second brucellosis milk ring test (BRT) shall be taken, if requested by any owner, part owners or caretakers, and if determined positive, then such cattle must be submitted for a bovine brucellosis blood test at the expense of the Texas Animal Health Commission. Such cattle shall only be determined free of bovine brucellosis after having passed a negative bovine brucellosis blood test. Provided, however, that if any animal or animals in a herd shows a positive reaction, within ten (10) days after receipt of notice by any owner, part owners or caretakers, a second bovine brucellosis blood test shall be taken, if requested by any owner, part owners or caretakers, at the expense of the Texas Animal Health Commission, and if the second blood test results in a positive reaction, such animal or animals shall be branded and disposed of according to the provisions of this Act. It is further provided, that in the event of problem herds the culture material of any positive reactor or reactors shall be sent to an approved laboratory to determine if the positive test is the result of inoculation by a brucellosis vaccine or the actual disease of brucellosis.

(11) In order to effectuate the provisions and purposes of this Section, the Livestock Sanitary Commission of Texas is hereby authorized to promulgate such rules and regulations and to require such reports and records as may be necessary to the testing, vaccinating and movement of cattle into and within said areas declared to be in the process of accreditation and into certified brucellosis free areas.

(12) Any person, firm or corporation that shall ship, drive, drift, haul, truck or otherwise transport cattle into and within any county or area declared to be in the process of accreditation or that has been designated as a modified brucellosis free area without written permit or certificate as provided for in accordance with the rules and regulations of the Livestock Sanitary Commission of Texas shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than

Ten Dollars (\$10) nor more than One Hundred Dollars (\$100) for each head of cattle which said person, firm, or corporation, railroad or other common carrier shall haul, drive, drift, lead or otherwise move into such designated area in violation hereof.

Provided, however, that no regulation shall ever prohibit the movement of cattle within such area by the owner thereof when such movement is confined to unquarantined contiguous lands owned or controlled by such owner.

(13) Representatives of the Livestock Sanitary Commission of Texas, including members of said Commission, are hereby authorized to enter into any public or private property for the exercise of any authority or the performance of any duty authorized under this Section. Any person who refuses to permit representatives of the Livestock Sanitary Commission to enter upon any property or premises of which he is owner, tenant, or caretaker for the purpose of carrying out the provisions of this Section, shall be deemed guilty of a misdemeanor and upon conviction shall be fined any sum not less than Ten Dollars (\$10) and not more than Two Hundred Dollars (\$200), and each separate day on which said refusal is made shall be considered a separate offense.

(14) If a representative of the Commission desires to be accompanied by a peace officer, provisions of Section 6 of this Act with respect to issuing search warrants shall apply to representatives engaged in brucellosis control and eradication.

(15) The Livestock Sanitary Commission of Texas is hereby authorized to employ veterinarians, inspectors, stenographers and necessary clerical help and such other persons it may deem necessary for the performance of any duty under this Section or the enforcement of any provisions of this Section and may detail its veterinarians, inspectors and other persons for any duty authorized under this Section or incidental thereto.

(16) All tests and vaccinations provided in this Section may be given and conducted by any person certified by the Texas Livestock Sanitary Commission, whether such person be a Doctor of Veterinary Medicine, or not.

(17) Owners, part owners and caretakers owning or having charge of cattle located within a Type II brucellosis control area, shall submit their cattle, furnish sufficient labor and facilities when directed by the Livestock Sanitary Commission of Texas or its authorized representative, in order that necessary blood or milk specimen may be secured from their cattle or in order that they may be vaccinated, tattooed, branded, ear notched or tagged in accordance with the regulations of the Livestock Sanitary Commission of Texas. Owners and caretakers owning or having charge of cattle located within a Type II brucellosis control area who fail or refuse to gather their cattle and furnish necessary labor and facilities in drawing blood or milk samples, vaccinating and identifying animals shall be deemed guilty

of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200) and each day of refusal or failure to submit cattle and render the assistance required under this Section shall be a separate offense.

(18) Should evidence of infection be disclosed in any of the animals required to be tested, such animals that react to the test shall be fire branded with the letter "B" on the left jaw and such cattle and herds shall be handled in accordance with regulations of the Livestock Sanitary Commission of Texas which shall provide for the issuance of quarantines, the manner, method and system of disposing of reactor cattle, the testing and retesting of infected herds, and the cleaning and disinfection of premises following removal of reactor cattle.

(19) Indemnities shall not be paid for any cattle which may be reactors to any test for brucellosis made under the provisions of this Section.

(20) Before regulations of the Livestock Sanitary Commission relating to control work of brucellosis in all types of areas shall become effective, notice of intent to promulgate such regulations shall be given by publication in at least three (3) newspapers having state-wide circulation: Said notice shall also inform the public that on a designated date stated in such published notice a hearing will be had at the office of the Livestock Sanitary Commission of Texas, at which hearing any person who objects to such proposed regulations or any part thereof shall have the right to appear either in person or by representative or both, and to state his objections. All such facts and evidence developed at such hearing shall be considered and evaluated by the Livestock Sanitary Commission and public notice shall be given by the Livestock Sanitary Commission within ten (10) days after such hearing stating whether or not such objections have been approved and adopted or have been disapproved and rejected by the Livestock Sanitary Commission.

(21) If any person, corporation or other party at interest be dissatisfied with any rule, order, act or regulation adopted by said Livestock Sanitary Commission of Texas, separately or in conjunction with the United States Department of Agriculture or any other agency, such dissatisfied person, corporation or other entity, after failing to get relief from said Commission, may within twenty (20) days of the date of issuance of such rule, order, act or regulation, file a petition setting forth the particular objection to such rule, order, act or regulation or either or all of them in the District Court of the county where said order, act or regulations have been or proposed to be enforced, against said Livestock Sanitary Commission of Texas as defendant. In all trials under this Section the burden of proof shall rest upon the plaintiff, who must show by the preponderance of evidence that the rules, or-

ders, acts or regulations complained of are unreasonable to it or them.

**Certified Brucellosis Free Counties**

Sec. 23B. When all of the counties of this State are certified by the Commission as having reached "modified certified brucellosis free" status, the Commission is authorized to begin all reasonably necessary operations to establish and maintain the counties of this State as "certified brucellosis free."

"Certified brucellosis free" is defined as that status which is reached when, in the eighteen (18) months preceding the request for county certification:

(1) no more than two-tenths of one percent (.2%) of the cattle in the county shall have been found infected;

(2) no more than one percent (1%) of the herds in the county, or one herd, whichever is greater, shall have been found infected; and

(3) there are no herds under quarantine for cattle brucellosis at the time of the request for county certification.

In carrying out this objective the Commission is authorized to promulgate necessary rules and regulations following publication of any proposed rules in not less than three (3) newspapers of statewide circulation, and a public hearing on such rules at a regular or special meeting of the Commission.

**Signatures of Commission or Chairman**

Sec. 24. All quarantines, written notices and other written instruments signed under the authority of the Chairman of the Live Stock Sanitary Commission shall have the same force and effect as if signed by the Commission. The signature of said Commission or Chairman shall be written or stamped under authority of said Commission or Chairman on all quarantine notices, and other instruments issued by said Commission or Chairman. Any written instrument issued by said Commission or Chairman shall be admissible as evidence in any Court of this State when certified by the Chairman of said Commission.

**County Attorney to Institute Civil Actions Against Non-residents for Fines**

Sec. 25. Whenever any person who is a nonresident of the State of Texas violates any penal provision of this Act and is absent from the State at the time of the said violation or whenever any foreign corporation which does not have a permit under the law to do business in the State of Texas violates any provision of this Act it shall be the duty of the County Attorney in any and all counties in the State of Texas wherein said violation occurs to institute a civil suit against said non-resident person or foreign corporation for the collection of the fine provided in said penal clause, and to run an attachment upon any property which said non-resident person or foreign corporation may at any time have in the State of Texas and aft-

er final judgment to have said attached property sold under execution, for the purpose of paying said fine and cost of suit. Said suit shall be instituted in the name of the State of Texas and no cost bond or attachment bond shall be required. Service of citation in such cases may be had by having notice of the pendency of said suit served upon said non-resident person or foreign corporation in the State of their domicile by some person over the age of 21 years. The said citation shall be served upon the defendant ten days before the beginning of the term of court the same as is now required on citations from the County Court. If the suit should be filed in a district court in a county which has two or more district courts of exclusive civil jurisdiction said notice shall be issued and served under the same requirements as is now provided for the service of citations from such courts upon defendants residing in another county in this State outside the county in which said Court is located. In lieu of the above service, citation may be had by publication under the same requirements that are now provided for citation by publication upon non-resident defendants.

**Quarantine of Foreign Shipments in Violation of Act**

Sec. 26. Whenever any live stock, canines or fowls are moved or permitted to move into the State of Texas in violation of any quarantine established under any provision of this Act or of any other Live Stock Sanitary Law or in violation of any provision of this Act or of any Live Stock Sanitary Law or are moved from any place in the State of Texas in violation of any quarantine established under this Act, it shall be the duty of the Live Stock Sanitary Commission to quarantine said live stock, canines or fowls wherever found and enforce said quarantine until said live stock have been properly treated or vaccinated or tested, dipped or otherwise disposed of as may be provided for in the rules and regulations of the Live Stock Sanitary Commission. The provisions of this Section shall apply to all live stock, canines and fowls and to all diseases mentioned in this Act, including also scabies among cattle, sheep and goats.

**Injunction by Private Citizen to Enforce Act**

Sec. 27. Any citizen of this State may bring an injunction suit to enforce any of the provisions of this Act or to restrain the threatened violation of any of the provisions of this Act; and the courts may hear and determine said injunction either in vacation or term time, and fully dispose of all issues involved in said injunction suit either in vacation or term time whether or not the same is a restraining or mandatory injunction. Provided reasonable notice is given the defendant under directions of the Court, where mandatory injunction is sought.

**Shipments Into Each County as Separate Offense**

Sec. 28. Every county in the State of Texas into which any live stock, domestic animals, domestic fowls, or designated disease carriers

under provisions of this Act are moved by any person, firm or corporation at any time within six months after said live stock, domestic animals, domestic fowls, or said designated disease carriers have been unlawfully moved or permitted to move from any county or part of county in the State of Texas in violation of any provision of this Act, or after having entered the state of Texas in violation of any quarantine established under authority of this Act, or in violation of any provisions of this Act, shall constitute a separate offense against said person, firm or corporation who so moves same into such other counties and against owners and caretakers thereof who permit the same to be done.

[Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52; Acts 1953, 53rd Leg., p. 1041, ch. 429, § 1; Acts 1959, 56th Leg., p. 149, ch. 90, § 1; Acts 1959, 56th Leg., p. 262, ch. 152, § 1; Acts 1959, 56th Leg., p. 418, ch. 188, § 1, eff. May 20, 1959; Acts 1961, 57th Leg., p. 179, ch. 96, §§ 1 to 4, eff. April 27, 1961; Acts 1963, 58th Leg., p. 595, ch. 216, § 2; Acts 1965, 59th Leg., p. 141, ch. 57, § 1; Acts 1965, 59th Leg., p. 530, ch. 274, §§ 1, 2, eff. May 28, 1965; Acts 1969, 61st Leg., p. 1563, ch. 471, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 58, ch. 31, § 1, eff. March 19, 1971; Acts 1971, 62nd Leg., p. 1060, ch. 219, §§ 1, 2, eff. May 17, 1971; Acts 1971, 62nd Leg., p. 2894, ch. 956, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1320, ch. 494, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1745, ch. 633, § 1, eff. Aug. 27, 1973.]

#### Art. 7014f-2. Failure to Report Charbon or Anthrax

Each person residing in a district where charbon or anthrax is prevalent or where the same is supposed to be prevalent shall report in writing to the county health officer, who in turn shall report in writing to the president of the State Board of Health all cases where an animal or animals are suffering with charbon or anthrax or supposed to have such disease, and each physician practicing in the State of Texas shall report in writing to the president of the State Board of Health all persons suffering from charbon or anthrax or supposed to be suffering from same and in case of failure to do so any person so failing shall be fined not less than ten nor more than twenty-five dollars. Each case of which no report is made shall constitute a separate offense.

[1925 P.C.]

#### Art. 7014f-3. Failure to Destroy Carcass

Carcasses of stock which have died from charbon or anthrax shall be destroyed by burning by the owner or person in charge within twenty-four hours after death and any owner or person having charge of said animals who should fail to destroy said carcasses as herein provided shall be fined not less than twenty-five nor more than one hundred dollars and each twenty-four hours after the first twenty-four hours that said carcass is permitted to remain undestroyed shall be a separate offense.

[1925 P.C.]

#### Art. 7014f-4. Disobeying Charbon Quarantine

The county health officer shall be the exclusive judge of the necessity of isolation or quar-

antine of all animals infected with charbon or anthrax and when in the judgment of said county health officer there exists a necessity therefor said county health officer shall issue a proclamation directing that all animals of certain classes which he may specify in the infected district, in either the entire county or any political subdivision thereof, shall be placed and kept in an enclosure by the owners or keeper thereof, and any owner or keeper of such animals for the owners who shall fail or refuse to obey the requirements of such proclamation shall be fined not less than ten nor more than fifty dollars and where any owner or keeper for the owner shall have more than ten animals subject to the quarantine regulations herein provided the fine shall be doubled and each day that any owner or keeper for such owner shall fail to comply with the proclamation of said county health officer shall constitute a separate offense and such quarantine shall continue and be in effect as long as in the judgment of such county health officer it may be necessary to prevent the spread of charbon or anthrax.

[1925 P.C.]

#### Art. 7014f-5. Permitting Animals to Run at Large

From and after the issuance and posting according to law of the proclamation declaring the result of the election held in a charbon district to be against the running at large of domestic animals therein it shall be unlawful for any owner or keeper of cattle, horses, sheep, goats and hogs, or any of them, to permit such animals as have been voted upon to run at large within such county or subdivision thereof at any time within which the same has been prohibited; and in case of failure or refusal of any owner or keeper of such stock or any of them to comply with such proclamation he shall be fined not less than five nor more than fifty dollars. Each day that any owner or keeper for such owner shall fail to comply with the law as herein provided for, shall constitute a separate offense.

[1925 P.C.]

#### Art. 7014f-6. Failure to Confine Animal With Glanders

Whoever wilfully fails or refuses to place in secure confinement apart from all other stock any animal of the horse or ass species belonging to him or subject to his control diseased with glanders or farcy shall be fined not less than twenty-five nor more than two hundred dollars or imprisoned in jail not less than ten nor more than ninety days.

[1925 P.C.]

#### Art. 7014f-7. Sale or Trade of Animal With Glanders

Whoever shall trade or sell or offer to trade or sell any animal of the horse or ass species known or suspected to be affected with glanders shall be fined not less than five nor more

than one hundred dollars or imprisoned in jail not less than ten nor more than ninety days. [1925 P.C.]

**Art. 7014f-8. Using or Permitting Animal With Glanders to Run at Large**

Any person who may drive, lead or ride any animal infected with said diseases of glanders or farcy, knowing them to be so infected, on, along or across any public highway, or allow any such animal so diseased to run at large on the open range of any county shall be fined not less than ten nor more than two hundred dollars.

[1925 P.C.]

**Art. 7014f-9. Unattenuated Hog Cholera Virus; Sale, Exchange or Distribution; Violations; Penalties**

Sec. 1. It shall be unlawful for any person, firm, partnership, corporation, or association to sell or offer for sale, barter, exchange, or give away unattenuated hog cholera virus in Texas.

Sec. 2. Unattenuated hog cholera virus means a virus which has not been modified or inactivated.

Sec. 3. Any person, firm, partnership, corporation or association violating this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

Sec. 4. Nothing in this Act shall prohibit the acquisition, propagation, manufacture, or use of unattenuated hog cholera virus by and on the licensed premises of firms operating under United States Veterinary License issued by the Secretary of Agriculture of the United States. Nothing in this Act shall prohibit the manufacture of unattenuated hog cholera virus by firms operating under United States Veterinary License for sale or distribution in states where use of unattenuated hog cholera virus is permitted. Provided, however, recognized colleges, universities and schools and laboratories engaged in research activities may keep on hand amounts of the vaccine for purely experimental and research activities.

[Acts 1959, 56th Leg., p. 81, ch. 40.]

**Art. 7014f-10. Duty of Veterinarians to Report Diseases**

**Report of Existence of Diseases**

Sec. 1. It shall be the duty of all veterinarians in the State of Texas to report to the Texas Animal Health Commission within twenty-four (24) hours after diagnosis the existence of the following diseases among livestock or domestic fowl: anthrax, scabies, hog cholera, vesicular exanthema, foot and mouth disease, vesicular stomatitis, piroplasmosis, ornithosis, pullorum, typhoid, and typhimurium.

**Death From Anthrax; Preparation and Submission of Specimen**

Sec. 2. Any veterinarian, upon pronouncing that any animal has died from anthrax as evi-

denced by clinical or post-mortem examination, shall immediately prepare a suitable specimen and submit it to the Livestock Sanitary Commission or a laboratory approved by the Livestock Sanitary Commission for examination. The name and address of the owner or caretaker and the location of the premises on which the animal died shall be submitted with the specimen.

**Required Information**

Sec. 3. It shall be the duty of the veterinarian, upon diagnosing any of the diseases to which reference is made in this Act, to furnish to the Livestock Sanitary Commission information concerning species and number of animals or domestic fowl, clinical diagnosis and post-mortem findings and death losses, if such losses have occurred.

**Burning of Carcass**

Sec. 4. It shall also be the duty of the veterinarian to inform the owner or caretaker of the livestock or domestic fowl which have died of anthrax or ornithosis, or suspected of dying of these diseases, to consume by fire the carcass or carcasses thereof as provided by Chapter 52, Acts of the Forty-first Legislature, First Called Session, as amended, which is compiled as Article 1525b, Vernon's Annotated Penal Code.<sup>1</sup>

<sup>1</sup> Transferred; see, now, article 7014f-1.

**Violations and Penalties**

Sec. 5. Willful failure or refusal on the part of any veterinarian to comply with the provisions of this Act shall be deemed a misdemeanor and, upon conviction, he shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100).

[Acts 1959, 56th Leg., p. 512, ch. 225; Acts 1969, 61st Leg., p. 572, ch. 191, § 1, eff. Sept. 1, 1969.]

**Art. 7014f-11. Diseased Cattle; Sales, Releases, Diversions and Deliveries; Fines**

**Definitions**

Sec. 1. A. When used in this Act the term "diseased cattle" shall mean cattle affected with carcinoma, actinomycosis, actinobacillosis, mastitis or any other diseased condition (either infectious or non-infectious) which renders the carcass of such cattle potentially dangerous for human consumption and which has been so designated by the Texas Animal Health Commission.

B. When used in this Act the word "person" means every natural person and shall include the partners or members of partnerships and associations and the officers, agents and employees of corporations.

**Sale of Diseased Cattle; Livestock Markets or Stockyards; Slaughtering Establishments; Exemptions**

Sec. 2. It shall be unlawful for any person to sell diseased cattle except through established livestock markets or stockyards where visual inspection of livestock is made by an agent of the Texas Animal Health Commission

or the United States Department of Agriculture or to recognize slaughtering establishments maintaining Federal, State or State-approved veterinary post-mortem inspection, except that the original owner of diseased cattle shall be exempt from the provisions of this Act when such diseased cattle are sold and delivered to the purchaser on the premises of the said original owner. This shall not be construed in any way to exempt the purchaser from the provisions of this and other Sections of this Act.

**Release of Diseased Cattle; Consignment to Terminal Market or Slaughtering Establishment; Certificate or Permit**

Sec. 3. It shall be unlawful for any person to release any diseased cattle from an established livestock market or stockyard covered by Section 2 above except when consigned directly to a Federally approved terminal market or to a slaughtering establishment maintaining Federal, State or State-approved veterinary post-mortem inspection, and unless such cattle are accompanied by a certificate or permit issued by an authorized representative of the Texas Animal Health Commission or the United States Department of Agriculture naming such terminal market or slaughtering establishment.

**Voiding Sales; List of Approved Establishments**

Sec. 4. Nothing in this Act shall prevent the original owner of diseased cattle, or his agent, from voiding the sale of said animals should he not be satisfied with the top bid price, providing that he removes said cattle from the market under a certificate or permit issued by an authorized representative of the Texas Animal Health Commission and then delivers said cattle to the place specified on said certificate or permit within five (5) days. In order for said owner or agent to be held liable under the penalties provided in this Act, said Representative of the Texas Animal Health Commission must show to said owner or his agent a list of approved establishments to which said cattle may be reconsigned and let said owner or agent select an establishment therefrom.

**Delivery or Diversion to Place Other Than Terminal Market**

Sec. 5. It shall be unlawful for any person to deliver or divert diseased cattle consigned under the certificate provided in Section 3 above to any place other than the terminal market or slaughtering establishment named in the certificate.

**Release From Terminal Market or Slaughtering Establishment**

Sec. 6. It shall be unlawful for any person to release any diseased cattle from any terminal market or slaughtering establishment to which such cattle have been consigned on the certificate provided in Section 3 and 5 above except upon authority of the Texas Animal Health Commission.

**Violation; Misdemeanor; Punishment**

Sec. 7. Any person performing an act declared to be unlawful herein shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

**Separate Offenses**

Sec. 8. Each sale, release, diversion or delivery of a diseased animal in violation of this Act shall be a separate offense.

**Delay in Shipping**

Sec. 9. Animals not arriving within five (5) days at the destination indicated on the shipping certificate shall be considered to have been diverted.

[Acts 1961, 57th Leg., 1st C.S., p. 48, ch. 20, eff. Aug. 11, 1961.]

**Art. 7014f-12. Bang's Disease; Branding and Tagging Infected Cattle; Refusal to Permit Branding; Penalty**

Sec. 1. When an accredited representative of the Livestock Sanitary Commission of Texas or an accredited representative of the United States Secretary of Agriculture or an authorized veterinarian makes an agglutination blood test for Bang's Disease of cattle in this State he shall furnish to the owner of such cattle in writing data showing that certain identified animal or animals have reacted to the test and are affected by the disease, it shall be the duty of the said authorized veterinarian or accredited representative of the Livestock Sanitary Commission within forty-eight (48) hours to brand each reactor or animal affected with the disease on the left jaw with the Letter "B" and place a metal tag in the ear of such animal with numbers thereon and report in writing to the Livestock Sanitary Commission of Texas the numbers on such tags.

Sec. 2. Any person, firm or corporation who shall fail or refuse to allow the said authorized veterinarian or accredited representative of the Livestock Sanitary Commission to brand the letter "B" on the left jaw of a cow showing a positive reaction to the agglutination test for Bang's Disease shall be deemed guilty of a misdemeanor and upon conviction shall be fined as herein provided.

Sec. 3. If any person shall violate any of the provisions of the preceding Sections 1 and 2 of this Act, he shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not to exceed Two Hundred Dollars (\$200) for each offense.

[Acts 1937, 45th Leg., p. 875, ch. 431; Acts 1947, 50th Leg., p. 461, ch. 262, § 1.]

**Art. 7014f-13. Bang's Disease; Sale of Infected Cattle Unlawful; Prima-Facie Evidence of Knowledge; Penalty**

Sec. 1. It shall hereafter be unlawful for any person to sell or otherwise dispose of any cattle for milk purposes when he knows or has

reason to believe said cattle are infected with Bang's Disease. If any person shall sell or otherwise dispose of any cattle having the brand of the letter "B" on the left jaw, the same shall be taken as prima-facie evidence in any Court of competent jurisdiction, that such person knew that said cattle was infected with Bang's Disease.

Sec. 2. If any person shall violate any of the provisions of this Act, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100.) The sale of each particular cow shall be considered a separate offense.

[Acts 1939, 46th Leg., p. 250; Acts 1947, 50th Leg., p. 461, ch. 262, § 2.]

#### Art. 7014f-14. Foot and Mouth Disease; Quarantines

Sec. 1. It shall be the duty of the Livestock Sanitary Commission to establish quarantines against other States, territories and foreign countries and portions thereof, and against certain areas of the territory of the State or subdivisions thereof whenever, in the judgment of the Commission, such quarantines may be necessary or advisable to prevent an outbreak of Foot and Mouth Disease in Texas, and to otherwise establish quarantines within the State of Texas in such form and manner as to said Commission may appear to be necessary or advisable, in order to prevent an outbreak of Foot and Mouth Disease, or to prevent a spread of said disease. The Livestock Sanitary Commission may in such quarantines, establish in relationship to Foot and Mouth Disease, forbid and prohibit all movement of livestock of any character or description and commodities and other goods and articles as shall in the order establishing such quarantine be specified. Notice of such quarantine, when so established, shall be given as now provided by law for other quarantines established by the Livestock Sanitary Commission.

Sec. 2. The Livestock Sanitary Commission shall establish all necessary rules and regulations pertaining to quarantines against Foot and Mouth Disease to the same extent and in the same manner now provided by law for quarantines against other infectious, contagious and communicable livestock diseases.

Sec. 3. Any person, firm or corporation who shall violate any quarantines established by the Livestock Sanitary Commission in relation to Foot and Mouth Disease, by any movement moving in violation of the quarantine, or by any movement moving any of the livestock or other commodities or goods and articles forbidden to be moved out of said quarantined area, shall upon conviction thereof be punished by a fine of not exceeding Five Thousand Dollars (\$5,000) nor less than Five Hundred Dollars (\$500), or by imprisonment in the County Jail for any length of time not exceeding six (6) months, or by both such fine and imprisonment. And in the event of a second conviction

for violation of such quarantine by the same person, firm or corporation such person, firm or corporation shall be deemed guilty of a felony and shall be confined in the penitentiary for any term of not less than two (2) years nor more than five (5) years, and by a fine of any amount not more than Ten Thousand Dollars (\$10,000).

Sec. 4. [See note following this article.]

Sec. 5. It is not the intention by this Act to abridge the authority of the Federal Government or to violate the provisions of any treaty, pact, or agreement between the United States and any foreign country, and it is hereby especially provided that this Act shall be limited and subordinated to any treaty, pact or agreement between the United States and any other Government and to any rights between Texas and States bordering thereon.

Sec. 6. Should any section, sentence, clause, phrase or word of this Act be held invalid by a Court of competent jurisdiction, it is hereby declared to be the legislative intent that the remaining portions of the Act shall not be affected thereby but shall remain in full force and effect after omitting such invalid section, sentence, clause, phrase or word.

[Acts 1947, 50th Leg., p. 3, ch. 3.]

Section 4 of the Act of 1947 provided: "In order that the provisions of this Act may be effectively carried out and administered and in order to prevent an outbreak of Foot and Mouth Disease within the State of Texas there is appropriated as an emergency appropriation from the General Revenue Fund of the State of Texas the sum of One Hundred and Fifty Thousand Dollars (\$150,000), which sum shall be and is made available from and after the passage of this Act to the Livestock Sanitary Commission to be used for the specific purpose of carrying out the provisions of this Act in the prevention or spread of an outbreak of Foot and Mouth Disease in this State; this appropriation to be available to the Livestock Sanitary Commission for and only for the purpose of quarantines, or such other measures that may be adopted by the Livestock Sanitary Commission for the prevention and spread of an outbreak of Foot and Mouth Disease, and, if and when, in the opinion of the Livestock Sanitary Commission there no longer remains a threat or danger of an outbreak or spread of Foot and Mouth Disease in Texas, said Commission shall so certify and the unused portion of this appropriation shall thereupon revert to the General Revenue Fund of the State. The Livestock Sanitary Commission is hereby authorized to use any or all of the money appropriated by this Act in any manner it deems necessary for the carrying out of the provisions of this Act; in the expenditure of the funds appropriated by this Act the Livestock Sanitary Commission shall not be bound by the limitations contained in Senate Bill 317, Acts of the Regular Session of the Forty-ninth Legislature [Acts 1945, p. 810, ch. 378]."

"The Chairman of the Livestock Sanitary Commission is directed and hereby required under oath to report monthly, not later than the tenth of each month for the preceding month, to the State Auditor, giving an itemized account of all moneys that have been expended and authorized to be expended out of the moneys appropriated by this Act; which report shall include the salaries and compensation paid to veterinarians, inspectors, and all other persons employed by said commission, together with their traveling expenses, if any; and shall also contain an itemized statement of all moneys expended for disinfectants, quarantine signs, public notices, and all other expenditures made out of the funds appropriated by this Act; and such other information as may be requested by the State Auditor."

#### Art. 7014g-1. Tick Eradication Law

##### Duties of Livestock Sanitary Commission

Sec. 1. It shall be the duty of the Livestock Sanitary Commission, provided in Article 7009, Revised Civil Statutes of 1925, to eradicate the fever-carrying tick (*Margaropus Annulatus*) in

the State of Texas and to protect all lands, territory, premises, cattle, horses, mules, jacks and jennets in the State of Texas from said tick and exposure thereto, under the provisions of this Act. Said Commission shall adopt necessary rules and regulations, to be proclaimed by the Governor of the State of Texas, for carrying out the provisions of this Act. One of the members of said Commission shall be Chairman thereof, and he is hereby authorized to perform any and all acts which may be performed by said Commission.

#### Definitions

Sec. 2. The word "Tick" as used in this Act shall be construed to mean the cattle fever-carrying tick known as *Margaropus Annulatus*. The "Free Area" is hereby defined as being composed of those counties and parts of counties in Texas which the Live Stock Sanitary Commission may designate as the Free Area and is so proclaimed by the Governor; the "Tick Eradication Area" is composed of those counties and parts of counties designated for tick eradication by the Live Stock<sup>1</sup> Commission and proclaimed by the Governor of the State of Texas as provided in this Act, the "Inactive Quarantined Area" is composed of those counties and parts of counties which are designated as such in Section 3 of this Act, or that may hereafter be designated as such by the Live Stock Sanitary Commission and proclaimed by the Governor of Texas under provisions of this Act. The term "Exposed" or "Exposure" shall be construed to mean that cattle, horses, mules, jacks and jennets shall be considered as exposed to the tick if they have been in any pasture or territory or upon any premises or place which was not at said time classed by the Live Stock Sanitary Commission as being free of said tick, or if said live stock have singled or come in contact with other live stock which were not classed by said Commission at said time as being free from said ticks and exposure thereto. All premises, pastures, lots, pens, ranches and other places which are not classed by the Live Stock Sanitary Commission as being free of ticks and exposure shall be considered as being exposed to said tick. Exposure shall be considered as continuing until the said premises and live stock have been declared free of exposure by the Live Stock Sanitary Commission. Whenever a tick is found upon any cattle, horses, mules, jacks, and jennets, every head of such live stock in said herd or which are located in the same pasture, pen, lot or in the same enclosure or upon the same range or that shall thereafter be located therein or thereupon, shall be classed as tick infested and said pasture, pen, lot, enclosure or open range in which and upon which they were located shall be classed as tick infested. Said classifications to continue until changed by said Commission under the provisions of this Act. No premises, place or live stock shall be considered as free from exposure in the Tick Eradication Area unless the Live Stock Sanitary Commission has officially

classed the same as free from exposure and filed in the office of the supervising inspector of the county wherein the same are located a copy of the order of said Commission making said classification, or unless the said supervising inspector under authority of said commission has made said classification in writing and filed the same in the office of said supervising inspector in said county. In this Act, "dip," "dipped," and "dipping" refer to submerging livestock in a vat, spraying livestock, or any other sanitary treatment of livestock as may be determined by the Commission.

<sup>1</sup> So in enrolled bill; word "Sanitary" should probably be inserted.

#### Inactive Quarantined Area, Proclamation for Tick Eradication

Sec. 3. The following counties and parts of counties in the State of Texas are hereby declared to be the Inactive Quarantined Area and are hereby quarantined because of tick infestation therein: Anderson, Angelina, Atascosa, all of Brazoria east of the Brazos River, Burleson, Cameron, Chambers, Cherokee, Duval, Fort Bend, Frio, Galveston, Grimes, Hardin, Harris, Hidalgo, Houston, Jasper, Jefferson, LaSalle, Lee, Leon, Liberty, Madison, Milam, Montgomery, McMullen, Nacogdoches, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Starr, Trinity, Tyler, Walker, Waller, Webb, Willacy and Zapata. It is hereby specially provided that the Live Stock Sanitary Commission shall designate for tick eradication, to be proclaimed by the Governor immediately upon the taking effect of this Act, that part of Live Oak County which was heretofore designated for tick eradication by proclamation of the Governor under Chapter 122, Acts of the Regular Session of the Thirty-Ninth Legislature, and all of Live Oak County not included in said designation is hereby declared to be a part of the Inactive Quarantined Area subject to designation for tick eradication by said Commission under provisions of this Act, at any time after the taking effect of this Act. It shall be unlawful, after the taking effect of this Act, for any cattle, horses, mules, jacks, or jennets to be moved or permitted to move from or within said Inactive Quarantined Area except in accordance with the provisions of this Act, and particularly as contained in Section 27 hereof. The Live Stock Sanitary Commission is hereby authorized to designate for tick eradication any of the aforesaid counties and parts of counties and any county or part of county that may have ticks therein without an election being held for said purpose, or said Commission may designate any part of any of said counties for said purpose. Whenever the Live Stock Sanitary Commission designates any of the aforesaid counties or parts of counties for tick eradication, the same shall be proclaimed by the Governor of the State of Texas, which proclamation shall become and be in effect on and after date prescribed in said proclamation. A brief notice of said proclamation shall either be published in a newspaper in the county

wherein tick eradication is to be conducted or posted at the court house door thereof. If only a part of a county is designated for tick eradication, said notice may be published in any newspaper in any part of said county, or posted at the court house door, whether or not said court house is located in said part of county. Said notice shall be either published or posted at least ten full days before the date the proclamation is to become effective. In the event the same is not published or posted ten full days before the date prescribed for said proclamation to become effective, or in the event said prescribed date has already passed, then the proclamation shall become effective upon the expiration of ten full days from the date of said publishing or posting. The expense of the publishing or posting of such notices shall be paid by the county in which said proclamation is effective. The quarantine herein established on said Inactive Quarantined counties and parts of counties shall remain and continue in full force and effect after the taking effect of the proclamation of the Governor designating any of said counties or parts of counties for tick eradication, and in addition thereto the further effect of said proclamation with reference to quarantine shall be as provided in Section 4 of this Act. The Live Stock Sanitary Commission is hereby authorized to transfer, by proclamation of the Governor, counties and parts of counties from any area to another area whenever the same is deemed advisable or necessary and to establish necessary quarantines on lands, premises and live stock. The re-establishment of quarantine on any portion of a county in the Free Area need not be proclaimed by the Governor.

**Proclamation for Tick Eradication to Declare Quarantine; Operation and Effect**

Sec. 4. Whenever any county, part of county, district or territory is designated for tick eradication by the Live Stock Sanitary Commission and proclaimed by the Governor, as herein provided, said proclamation shall contain a provision quarantining said county, part of county, district or territory, and the effect of such quarantine shall be to quarantine said county, part of county, district or territory and all lands, pastures, pens, lots, premises, and all cattle, horses, mules, jacks and jennets of each individual owner, lessee, renter, tenant and occupant in the designated county, part of county, district or territory without specifically designating said land, pasture, pen, lot and premises, and after said quarantine becomes effective it shall be unlawful for any cattle, horses, mules, jacks or jennets located therein or which may thereafter be located therein during the existence of said quarantine, to be moved or permitted to move from the land, pastures, pen, lot or premises of an owner, lessee, renter, tenant or occupant, whether enclosed or not, onto or into or through any other land owned or leased or rented, tenanted or occupied or controlled by any other person, firm or corporation or onto any open range, public

street, public road or any thoroughfare, without a permit or certificate from an authorized inspector of the Live Stock Sanitary Commission. It shall be unlawful for any owner or caretaker of cattle, horses, mules, jacks or jennets located in said quarantined territory to move or permit or allow the movement of said live stock without said permit or certificate from any pasture, pen, lot, or other enclosure of which he is the owner, lessee, renter, tenant or occupant, or from any open range or street, road or thoroughfare or from land which he does not own or control into any other pasture, pen, lot, enclosure or other land of which he is the owner or caretaker, or of which he is in control, if said live stock are subject to dipping under the provisions of this Act, and the pen, lot pasture, enclosure or land into which he moves or allows or permits said movement is classed in the records of the supervising inspector of said county as free of ticks or has been released from quarantine by said Commission or if said live stock are subject to dipping but are not being dipped under the provisions of this Act in the conduct of regular systematic tick eradication by said Commission, and are so moved or allowed or permitted to so move into a pasture, pen, lot, enclosure or other land owned or controlled by said owner or caretaker of said live stock where tick eradication is being conducted, under the provisions of this Act, or into a pasture or other enclosure owned or controlled by said owner or caretaker of said live stock, which said pasture or enclosure is vacated for the purpose of tick eradication by vacation methods under the direction of said Commission. Owners and caretakers are hereby permitted to move and allow the movement of cattle, horses, mules, jacks and jennets to and from dipping vats for the purpose of dipping said live stock on any regular dipping date at said vat to which they are to be moved, or on any other dipping date designated by the inspector in charge of said dipping vat, provided they are moved in accordance with the rules and regulations of the Live Stock Sanitary Commission. If they are moved otherwise than<sup>1</sup> prescribed in said rules and regulations the same will constitute a violation of the quarantine. The term "other land" means land which is separated from the land from which the movement is made by a fence or other dividing line or by land of another person, firm or corporation.

<sup>1</sup> So in enrolled bill. The word "as" should probably be inserted after "than."

**Commissioners' Court to Coöperate With Commission; Maintenance of Vats at County Expense**

Sec. 5. It shall be the duty of the County Commissioners' Court of every County in the State of Texas in which the Live Stock Sanitary Commission is authorized to conduct tick eradication under the provisions of this Act, to cooperate with said Commission in the eradication of said tick in their respective counties, and it shall be mandatory upon said Commissioners' Courts to furnish at the expense of the county, in localities designated by the Live

Stock Sanitary Commission, a sufficient number of dipping vats, pens, chutes and all necessary facilities of the kind and description designated by said Commission, for the purpose of dipping cattle, horses, mules, jacks and jennets under the supervision of inspectors of the Live Stock Sanitary Commission, the said vats, pens, chutes and other facilities to be owned or leased by the county, and said Commissioners' Court are hereby authorized, empowered and directed, and it is hereby made their duty to appropriate moneys out of the general funds of their counties, to incur indebtedness by the issuance of warrants, and to levy taxes to pay the interest thereon, and to provide a sinking fund for the payment thereof for the purpose of constructing, purchasing or leasing necessary public dipping vats in their counties, including all necessary land, property, material and labor for said purpose; provided said warrants shall draw interest at a rate not exceeding six per cent per annum and shall not run exceeding twenty years from the date hereof. It shall also be the duty of said County Commissioners' Courts to maintain said vats at the expense of the county, including all necessary repairs, changes, alterations or remodeling of any of said vats, pens, chutes or other facilities connected therewith; also to furnish at the expense of the county water for filling and refilling said vats and to bear all expense necessary in cleaning out and refilling said vats. The provisions of this Section shall apply to the County Commissioners' Court of any county in which the Live Stock Sanitary Commission is authorized by this Act to conduct tick eradication, whether all of said county or only a part thereof is designated for tick eradication. The provisions of this Section shall also apply to counties and parts of counties in the Free Area whenever it is necessary for said Commission to conduct tick eradication in any part of any county in the Free Area. County Commissioners' Courts in all counties are hereby authorized, at their discretion, to pay out of the general funds or any available funds of their county, the salaries and necessary traveling expenses of a sufficient number of inspectors for tick eradication purposes, and purchase dipping material, but in such event such inspectors shall be appointed and directed by the Live Stock Sanitary Commission, regardless of the fact that their salaries and expenses may be paid by the county. The provisions of this Section with reference to said County Commissioners' Courts furnishing, at the county's expense, said inspectors and dipping material, are only for the purpose of authorizing same at the discretion of Commissioners' Court, but are not to be construed as mandatory upon said Commissioners' Courts.

**Inspectors Nominated by Commissioners' Court; Appointment by Commission**

Sec. 6. The Commissioners' Court of every county in this State where tick eradication is authorized to be conducted under any provision of this Act, may nominate for appointment by

the Live Stock Sanitary Commission the number of local inspectors found by the Live Stock Sanitary Commission to be necessary to carry on the work of tick eradication in such county, and when so nominated said Live Stock Sanitary Commission shall appoint them. In the event of failure or refusal of the Commissioners' Court to nominate said local inspectors the Live Stock Sanitary Commission is hereby authorized to appoint the number of local inspectors deemed by them to be necessary. Said local inspectors shall work under the direction and orders of the Live Stock Sanitary Commission and shall be subject to discharge by said Commission and shall be paid their salaries out of the State Treasury of the State of Texas, their compensation to be fixed by said Commission. In the event the Commissioners' Court should nominate any persons who are thereafter appointed as local inspectors and the Live Stock Sanitary Commission finds or concludes that the Commissioners' Court of said county are trying to retard tick eradication or that they are nominating men who are incompetent or negligent in the performance of their duty, then and in that event the Live Stock Sanitary Commission is hereby authorized to ignore in the future nominations or recommendations by said Commissioners' Court of such inspectors. County and district supervising inspectors shall not be nominated by Commissioners' Courts, but shall be appointed by said Commission on its own initiative.

**Exercise of Eminent Domain by Commissioners' Court**

Sec. 7. There is hereby conferred upon the County Commissioners' Court of every county in the State of Texas the right of Eminent Domain for the purpose of acquiring necessary lands, and ingress thereto and egress therefrom, for the purpose of establishing, constructing and maintaining dipping vats, pens, chutes and other facilities connected therewith, and for the purpose of acquiring dipping vats, pens, chutes and facilities that have already been constructed, with ingress thereto and egress therefrom. The right of Eminent Domain is to be exercised by said Commissioners' Court under the same provisions of law now in effect for the acquiring of land or lands for the building and maintenance of courthouses, jails and other public buildings, except that it shall be mandatory upon the County Commissioners' Court of any county in which tick eradication is authorized to be conducted under the provisions of this Act, whether in the Free Area or in the Tick Eradication Area, to institute and prosecute condemnation proceedings in the name of the county upon written application of the Chairman of the Live Stock Sanitary Commission, designating the land to be condemned and its location and the name of the owner, and also designating the easement to be acquired for the purpose of ingress there to and egress therefrom. In acquiring said vats, pens, chutes, facilities and lands, the said Commissioners' Court may either retain the same for permanent use by making said compensation, or the said Court may acquire the

temporary use of same, together with said easement, for the purpose of ingress thereto and egress therefrom by making proper compensation to the owner thereof for such period of time as said Court may find it necessary to use same.

Commission to Prescribe Dipping Materials; Method  
of Testing by Inspectors

Sec. 8. (a) The Texas Animal Health Commission shall prescribe in its rules and regulations the dipping materials to be used in the dipping of cattle, horses, mules, jacks and jennets, under the provisions of this Act, and the same shall be recognized official dipping materials for the dipping of such livestock, under the provisions of this Act, and no other dipping materials shall be used for such purposes.

(b) If the dipping solution is designated as a solution using dipping materials of the kind that are ordinarily known as arsenical dipping materials used for the dipping of livestock for the eradication of the fever-carrying tick, the Commission shall also prescribe in its rules and regulations the manner and method by which its inspectors shall test such arsenical dipping solution after the same has been mixed with water in the dipping vat for the purpose of determining the arsenical contents of the solution. The testing of said dipping solution shall be by the use of testing outfits, testing materials and testing fluids furnished to inspectors by the Texas Animal Health Commission or by the United States Department of Agriculture, Animal Health Division, in cooperation with said Commission, for the purpose of ascertaining said arsenical contents. When a test is made of said dipping solution by the use of the testing outfit, testing materials and testing fluid furnished by said Commission or Bureau, as herein provided, the same shall be accepted as the official test of said dipping solution. In the dippings of cattle, horses, mules, jacks and jennets in regular tick eradication, other than for official movement of said livestock, the test of said dipping solution after being mixed with water in the vat ready for dipping shall be not less than eighteen cubic centimeters or not more than twenty cubic centimeters, as shown by the test made with said testing outfits, testing material and testing fluid. By the term "not less than eighteen cubic centimeters and not more than twenty cubic centimeters" is meant that in making said test with said testing outfit, testing material and testing fluid in accordance with the directions contained in the rules and regulations of the Texas Animal Health Commission, the inspector who makes said test secures the results described in said rules and regulations, to-wit: a decided change of color of said dipping material to a light purple, as showing the completion of said test, by mixing not less than eighteen cubic centimeters nor more than twenty cubic centimeters of testing fluid with twenty-five cubic centimeters of said dipping solution into which has been dissolved a test tablet furnished with said testing outfit by said Tex-

as Animal Health Commission or Animal Health Division, United States Department of Agriculture. In the trial of any case in connection with the dipping or failure to dip livestock under any provision of this Act, it shall be presumed that the dipping vat in question contained a sufficient amount of said dipping solution for dipping said livestock and that said dipping solution had been properly tested and that it showed the above test, or that said dipping solution could have and would have been put into said vat and tested to show the above test if the owner or caretaker had brought his livestock to said dipping vat for the purpose of dipping; and it shall not be necessary for the state to allege and prove in any criminal prosecution for failure to dip livestock under any provision of this Act, that said vat contained said dipping solution showing said test. If it becomes necessary in any court proceeding to prove the test of said dipping solution, it shall only be necessary to prove that the dipping material used was one of the official dipping materials prescribed in the rules and regulations of the Texas Animal Health Commission, and that the inspector tested said dipping solution in accordance with the provisions of this Section and of the rules and regulations of the Texas Animal Health Commission and that the test showed not less than eighteen cubic centimeters or not more than twenty cubic centimeters, as defined and explained in this Section and in said rules and regulations. When said dipping material is mixed with water in the dipping vat and is tested by an inspector of said Commission and shows a test at any strength of not less than eighteen cubic centimeters or not more than twenty cubic centimeters, it shall be the duty of all owners and caretakers of livestock which are subject to dipping to dip said livestock in said dipping solution at said strength, as shown by said test. The twenty-two cubic centimeter test elsewhere referred to in this Act shall be made in the same manner herein described by securing said change in color by mixing twenty-two cubic centimeters of said testing fluid in said dipping solution in which has been dissolved said test tablet.

(c) The Texas Animal Health Commission shall have the authority to prescribe by rule or regulation other dipping materials for use in the dipping of cattle, horses, mules, jacks and jennets under the provisions of this Act. The rules and regulations prescribing other dipping materials shall also set forth the purpose for which each dipping material is to be used and the manner in which each dipping solution shall be prepared.

Penalty for Damaging or Destroying Public  
Dipping Facilities

Sec. 9. The dipping vats, pens, chutes and other facilities as provided for in this Act, are hereby designated as "Public Dipping Facilities." Any person who shall without lawful authority damage or destroy any public dipping facilities or any part thereof by cutting, burn-

ing, tearing down, dynamiting or the use of any other explosives or means for said purpose, or who shall attempt to damage or destroy such public dipping facilities or any part thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Two Hundred Dollars nor more than One Thousand Dollars or be imprisoned in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment.

**Dipping Material Furnished by State; Directions  
for Dipping**

Sec. 10. The official dipping material prescribed in the rules and regulations of the Live Stock Sanitary Commission shall be furnished at the expense of the State by appropriation for that purpose. The said Commission and its Chairman are hereby authorized to direct owners, part owners and caretakers of live stock which are subject to dipping under the provisions of this Act, to dip said live stock in said official dipping material. Said direction to be in writing and signed either by said Commission or said Chairman, which signature may be written or stamped thereon, under authority of either the Commission or its Chairman, and the same shall be dated and shall direct said person, firm or corporation to dip said live stock under the supervision of an inspector of said Commission at a designated dipping vat, and stating the dates on which said live stock are to be dipped, and the said direction may contain as many dipping dates as, in the discretion of said Commission, may be necessary for eradicating said infection or exposure from said live stock and the premises upon which they are located. Said direction shall further direct said person, firm or corporation to dip all other cattle, horses, mules, jacks and jennets of which he at any time may be the owner, part owner or caretaker, which may at any time be located upon the premises described in said written dipping direction, during the period of time covered by said written dipping direction. Said dipping direction shall further state that unless said person dips said live stock on the dipping dates therein prescribed the same will be done at said person, firm or corporation's expense, under the provisions of this Act authorizing peace officers to deputize helpers and dip said live stock under the supervision of an inspector. All cattle, horses, mules, jacks and jennets located in the Tick Eradication Area or in the Free Area shall be subject to dipping under the provision of this act if they are infested with the tick, as the term "infested" is defined in this Act, or if they are exposed or have been exposed to said tick at any time within nine months next preceding the date of the issuance of said dipping direction. When such live stock have been in or upon any pasture, pen, lot, enclosure, land or other place and it should be ascertained by said Commission either before or after said live stock are moved therefrom that said land, pasture, pen, place or enclosure is tick infested or exposed,

the said Commission shall class said live stock as exposed and said Commission is authorized to direct the dipping of said live stock which have moved therefrom, unless said Commission definitely ascertains that said infection and exposure occurred after said live stock moved therefrom and that they did not become infested or exposed while thereon or therein. Provided that where a dipping direction is issued before the expiration of nine months, as provided herein, additional dipping directions may be issued at any time thereafter if said live stock and the said premises are not freed of all ticks and exposure thereto before the expiration of the dates prescribed in said first dipping directions. The dipping directions provided in this Act shall be delivered to said person at least twelve days before the first dipping date prescribed therein and shall direct said person, firm or corporation to dip said live stock at intervals of every fourteen days,—allowing thirteen full days to intervene between dipping days, and no part of any dipping day shall be included as a part of the said thirteen days interval. Provided further that the Live Stock Sanitary Commission may, at its discretion, direct the dipping of live stock with a longer interval than said thirteen days between dipping days. Provided that the date of delivery of said dipping direction and the date of first dipping prescribed therein shall not be included as a part of said twelve days notice, but there shall be at least twelve full days exclusive of said date of delivery and said first dipping date; and provided further that in the event said twelve days do not intervene between said date of delivery and said first dipping date or if said first dipping date or other dipping dates contained in said dipping direction have passed at the time of the delivery of said written dipping direction, it shall be the duty of said owner, part owner, or caretaker to begin dipping on the first dipping date after the expiration of said twelve full days, and to thereafter dip said live stock on all succeeding dipping dates prescribed in said written dipping direction. It shall not be necessary for written dipping directions to describe the premises or land by field notes or metes and bounds or other measures, but it will be sufficient if the same contains such reasonable description as will inform the person, firm or corporation to whom the same are directed what premises or land are covered thereby.

**Compliance With Dipping Directions**

Sec. 11. Whenever the Live Stock Sanitary Commission or its Chairman shall issue dipping directions in writing to any owner, part owner or caretaker of any cattle, horses, mules, jacks or jennets which are located in the Tick Eradication Area or in the Free Area, and which said live stock are infested with the tick (*Margaropus Annulatus*) or are exposed to said tick or have been exposed to said tick at any time during the nine months next preceding the date of the issuance of the said written dipping directions and said written dipping

directions are served upon said owner, part owner or caretaker, as provided in this Act, shall be the duty of said owner, part owner or caretaker to dip said live stock as directed in said written dipping direction and also in addition thereto it shall be the duty of said owner, part owner, or caretaker to dip all other cattle, horses, mules, jacks, and jennets of which he may at any time be owner, part owner, or caretaker which may be located upon the premises referred to in said written dipping direction during any of the period of time covered by said written dipping direction. All of said dippings to be administered as directed in said written dipping direction. Any owner, part owner, or caretaker of any cattle, horses, mules, jacks or jennets who fails or refuses, after the expiration of the twelve days period of notice provided in this Act, to dip said livestock as prescribed in said dipping directions, on any date prescribed therein during the hours prescribed therein under the supervision of an inspector of the Live Stock Sanitary Commission in an official dipping solution prescribed in the rules and regulations of the Live Stock Sanitary Commission under the provisions of this Act, in the dipping vat designated in said written dipping direction shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. The terms "caretaker," "exposed," and "infested" shall be construed as elsewhere defined or explained in this Act.

Hearing on Protest of Dipping Directions; Notice and Compliance With Decision of Commission

Sec. 12. Any person, firm or corporation that desires a hearing for the purpose of protesting against the enforcement of any dipping direction issued under the provisions of this Act, may file with the supervising inspector in the county in which said live stock are located, at least ten full days before the dipping date or dates on which he seeks to be excused from dipping said live stock, a sworn application for said hearing, which application shall be forwarded by the supervising inspector to the Live Stock Sanitary Commission. The date of the filing of said application and the first succeeding dipping date following the filing of said application shall not be included as a part of said ten days, but these shall be ten full days independent of said dates. The Commission shall set a hearing in the office of the Chairman of said Commission, and the applicant may appear at said hearing either in person or by attorney or both, and may submit such ex parte affidavits as he desires. The Commission shall also consider controverting affidavits and statements. The Commission shall render its decision in writing and transmit the same to the supervision inspector in said county, who shall thereupon either deliver the same in person to the applicant or transmit the same to him by registered mail to the address shown in said application. If the Commission overrules said application, it shall be

the duty of said person to thereafter dip said live stock on all the dipping dates prescribed in said dipping direction, but he shall not be required to dip said live stock on the first dipping date following the delivery to him of copy of the decision rendered by said Commission, unless two full days intervene between the date of said service and the said next dipping date, provided that where service is by registered mail the time of depositing same in the mail without regard to whether it is received, shall be regarded as the time of said service, but he shall not be required to dip said live stock on the first dipping date following said service, unless four full days intervene between the date of depositing the same in said registered mail and the first dipping date thereafter. Supervising inspectors of counties may for good cause excuse the dipping of live stock after the issuance and service of written directions from said Commission requiring the dipping of said live stock; but such supervising inspectors shall be held responsible for excusing same without good and sufficient reason.

Owners and Caretakers to Pay Expenses; Persons Liable

Sec. 13. Owners and caretakers of live stock subject to dipping under provisions of this Act shall furnish all necessary labor at their own expense for gathering live stock and driving them to the dipping vat, dipping them and returning them to their premises after said dipping. Any owner, part owner, lessee, renter, tenant, occupant or caretaker of any land, ranch, pasture, farm or premises of which he has control, who is not the owner or caretaker of cattle, horses, mules, jacks and jennets that may be located upon any part of said land, ranch, pasture, farm or premises, of which he has control, who is not the owner or caretaker of cattle, horses, mules, jacks and jennets that may be located upon any part of said land, ranch, pasture, farm or premises, shall, for all purposes of this Act, be considered the caretaker of said live stock and shall be held liable and responsible for the dipping of said live stock under the provisions of this Act and subject to prosecution for failure to dip the same as if he were the owner of said live stock. The owner of said live stock and all persons who own any interest therein and all other caretakers thereof, shall also be held liable and responsible for said dipping and subject to prosecution for failure to dip. Parents are hereby declared to be the caretakers and shall be held responsible for the dipping of cattle, horses, mules, jacks and jennets owned in whole or in part by their minor children, unless some person other than a parent of said minor is the legal guardian of the estate of said minor. Administrators and executors and guardians are hereby declared to be the caretakers and shall be held responsible for the dipping of live stock belonging in whole or in part to the estate under their control by reason of said administration or guardianship, or any live stock that may be found upon any land or premises

belonging in whole or in part to said estate. Husband and wife shall be held jointly and severally liable for the dipping of such cattle, horses, mules, jacks and jennets as belong to their community estate, and the husband shall be held liable for the dipping of live stock belonging to his separate estate and the wife shall be held liable for the dipping of live stock belonging to her separate estate, provided that the husband shall be held liable for the dipping of live stock belonging to the separate estate of the wife and the wife shall be held liable for the dipping of live stock belonging to the separate estate of the husband, if either is the caretaker of such live stock belonging to the separate estate of the other, as the term caretaker is defined in this Act.

**Ownership at Time of Service of Dipping Order Presumed to Continue Until Time of Failure to Dip**

Sec. 14. When an inspector ascertains that a person, firm or corporation is the owner, part owner or caretaker of any cattle, horses, mules, jacks or jennets which are subject to dipping under the provisions of this Act, and a dipping order is issued and served, as herein prescribed, it shall be presumed that at the time of said failure to dip any of said live stock said person, firm or corporation was still the owner or part owner or caretaker, as the case may be, of live stock subject to dipping located upon the premises described in said written dipping direction, and it shall only be necessary for the State to allege and prove that at the time of the service of said written dipping direction said person, firm or corporation was the owner or part owner or caretaker of live stock subject to dipping located upon said premises. If for any reason, after the service of a dipping direction, it should occur that by legal means there are no longer any live stock on said premises subject to dipping, the defendant may avail himself of said defense only by filing, at the beginning of the trial, a sworn statement of this fact, but in the absence of the filing of said sworn statement it shall be presumed that the defendant's status as owner, part owner or caretaker had remained unchanged since the service of said written dipping direction.

**Dipping by Peace Officers on Refusal of Owner to Dip; Fees as Lien**

Sec. 15. Upon the failure of any owner, part owner or caretaker to dip any livestock on any date, as directed in writing by the Live Stock Sanitary Commission under the provisions of this Act, at any time and place required of said owner or caretaker in any written dipping direction issued by the Live Stock Sanitary Commission and served upon him, or where such owner, part owner or caretaker, prior to any dipping date specified in said dipping direction, states that he does not intend to dip his said live stock, it shall be the duty of the inspector in charge of tick eradication in said county to notify the sheriff or any constable in said county of said fact, and it shall thereupon be the duty of said officer to depu-

tize a sufficient number of helpers to be designated by the supervising inspector in charge of said county to go upon the premises where said live stock are located and gather said live stock and dip them under the supervision of an inspector of the Live Stock Sanitary Commission, in accordance with said written direction, and to continue dipping them on all the succeeding dipping dates therein prescribed, unless and until said owner, part owner or caretaker begins and continues said dipping according to said directions. Said peace officers are hereby allowed the sum of Two Dollars per head for all said live stock dipped as herein provided; out of which sum the said officers shall pay reasonable wages to said helpers and retain as their fees a reasonable portion thereof. A lien is hereby given said peace officers upon all such live stock as may be dipped under these provisions for the purpose of securing the payment of the aforesaid sum, and also for the payment of an additional sum to cover expenses of holding, feeding and watering said live stock during the time said officers held them in their possession, and said officers are authorized to retain in their possession and sell at public sale to the highest bidder, at any time at the courthouse door of said county within sixty days after said dipping, a sufficient number of said live stock for paying the said sum of Two Dollars per head for each head of such live stock dipped and said expense of holding, feeding and watering said live stock, by posting a written notice at the courthouse door at least five days in advance of said sale. The residue, if any, to be paid to owner of said live stock or paid to the County Treasurer, subject to the order of the owner. Each date on which said live stock are dipped under the provisions of this Section shall authorize the collection of said sum of Two Dollars per head and said other sum for said expenses.

**Officer Fixing Lien for Dipping by Filing Statement; Foreclosure**

Sec. 16. In lieu of retaining possession of said live stock, as provided in the preceding Section, said officer may fix said lien by filing with the County Clerk of the county in which said live stock are located a sworn statement of said indebtedness and describing said live stock upon which said lien is to be placed, which shall be filed within six months after said dipping, and suit shall be filed in a court of competent jurisdiction against the owner of said live stock within twenty-four months after filing said statement for the collection of said account and the foreclosure of said lien; no cost bond shall be required of said officer filing said suit, nor of any person to whom said account may be assigned. The court shall enter judgment for said debt, with interest and costs of suit and foreclosing said lien, on such number of said live stock as the court may deem necessary for defraying said expenses and paying said fees to said officer and court costs. The provisions of this Section, and also

of the preceding Section, with reference to fixing of liens, foreclosures and sales, shall apply in all other Sections of this Act in which peace officers are given liens on live stock for any purpose of this Act, and said officer may proceed under provisions of the preceding Section or of this Section. Said officer may file a separate statement and separate suit covering each dipping date or may wait until a number of them accrue and sue in the aggregate in one suit, and a statement may be filed covering all of said dippings within six months after the last dipping and suit filed on all of them in the aggregate within twenty-four months after filing of said statement.

**Peace Officers Authorized to Perform Duties of Sheriff**

Sec. 17. Where by any provision of this Act a sheriff is authorized to perform any act, the same shall also include any and all peace officers of this State who may be legally authorized by any law to perform service in such territory.

**Injunction by Resident to Compel Compliance with Dipping Directions; Hearing**

Sec. 18. Any resident or residents of any county or part of county in which tick eradication is being conducted may bring Mandatory Injunction to compel owners, part owners or caretakers to dip their cattle, horses, mules, jacks and jennets under the provisions of this Act after said owner, part owner or caretaker has failed or refused to dip them or is threatening or has threatened to refuse or fail to dip them, and the court may, in term time or vacation upon notice to defendant, hear and determine same and if the court finds that said owner, part owner or caretaker has been served with a written dipping direction from the Live Stock Sanitary Commission to dip said live stock and that said live stock are subject to dipping, and that the material allegations in plaintiff's petition are true, the court shall enter its order commanding said owner or caretaker to dip said live stock, designating the time and place of said dippings, as specified in the written dipping direction of the Live Stock Sanitary Commission, and upon failure of said person to dip said live stock at any time or place so ordered in accordance with said written dipping direction or in accordance with said order of said court, he shall be held liable for contempt of court and punished accordingly, and the court shall order the sheriff or a deputy sheriff to deputize a sufficient number of helpers to dip said live stock in accordance with the court's order, and the expense of said dipping and employment of said sheriff or deputies and helpers shall be taxed as cost against the defendant in said suit, and lien is hereby provided in favor of sheriffs and their deputies and helpers on all such live stock dipped in accordance with said court order, for the purpose of securing the payment of said expenses and costs. After the dipping of live stock under said court order, the sheriff or deputy shall file a sworn statement with the Clerk of the District Court showing the number and de-

scription of the said live stock dipped, and the court shall order a foreclosure of the lien upon said live stock or upon such number of head as may be necessary for the payment of said expenses and costs, which live stock shall be sold as under execution. The said sworn statement may be filed after each dipping and said foreclosure made after each respective dipping, or the said sheriff or deputy may wait until a number of dippings have been administered and file a sworn statement covering each dipping and secure a foreclosure on all of them in the aggregate. The said right to file said written sworn statement and secure foreclosure of said lien shall exist for a period of twelve months after each dipping. The residue, if any, after the payment of said expenses and costs, shall be paid to the Clerk of the Court in which said suit is pending, subject to the order of the owner of said live stock. In any court proceeding under this Act, for the foreclosure of any lien authorized by this Act, the residue, if any, after the payment of said expenses and costs, shall likewise be paid to the Clerk of the Court, subject to the order of the owner of said live stock.

**Dipping by Officers of Animals Running at Large Without Known Owner; Compensation**

Sec. 19. Whenever any inspector ascertains that there are any cattle, horses, mules, jacks or jennets in any county or part of county in which tick eradication is being conducted, under the provisions of this Act, running at large or upon the open range, for which he can locate no owner or caretaker, said inspector shall call upon the sheriff or any constable in said county to deputize helpers and to seize said live stock and dip them under supervision of an inspector of the Live Stock Sanitary Commission and make such other disposition of said live stock as may be necessary for the purpose of tick eradication, including impounding them at such place as may be designated by said inspector, and the said officer is hereby given a lien on said live stock to defray the expenses of said gathering, dipping and impounding, feeding, watering and caring for said live stock, and to pay such helpers as may be necessary in carrying out the provisions of this Act. The amount allowed said officer for his services and the services of helpers, exclusive of said feeding, impounding and caring for said live stock, shall be Two Dollars per head for each head of such live stock seized by said officer or impounded or otherwise disposed of, under the provisions of this Section, out of which sum said officer shall pay reasonable wages to helpers and retain as compensation for his services a reasonable portion thereof.

**Owner's Statement as to Origin and Destination of Animals Being Moved; Seizure for Violation of Quarantine**

Sec. 20. Owners, part owners and caretakers of cattle, horses, mules, jacks and jennets, and persons accompanying and connected with or who had accompanied and been connected with the movement of any cattle, horses, mules,

jacks or jennets which are being or have been shipped or driven or drifted or led or hauled or trucked or otherwise moved, in any part of the State of Texas, at any time during the preceding sixty days, shall be required, when requested by an inspector of the Live Stock Sanitary Commission, to make a written statement of the county and name of the owner or party in control of the land where said movement originated and also the county and the particular place in said county to which they are destined, also the name and address of the person from whom said live stock were bought or obtained, if he has acquired possession of them in the preceding thirty days, and if they were not bought or obtained during said preceding thirty days, said fact shall be stated. He shall also state the territory which said live stock have traversed since leaving said point of origin, and the territory which it is expected they will traverse in reaching destination. Any owner or caretaker or person accompanying and connected with such movement or who has accompanied and been connected with such movement of said live stock who shall fail or refuse to make said written statement in compliance with this provision, or who shall make any false written statement of said matters, shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars. Where an inspector discovers live stock that are being moved or have been moved in violation of any quarantine under provisions of this Act, he may call upon any peace officer to seize and impound said live stock at the expense of the owner, or if practicable return them to place of origin at the owner's expense. A lien is hereby given said peace officer upon said live stock, subject to other provisions of this Act, for the enforcement thereof to cover the expense of said peace officer and helpers for the performing of said duties, and the sum of Two Dollars is hereby allowed said peace officer for the purpose of paying his fee and said helpers, also the expense of feeding, watering and holding said live stock shall be chargeable to the owner, for which a lien is also given herein.

Transportation of Animals From Quarantined Areas;  
Penalties

Sec. 21. Any person, firm or corporation or transportation company who shall ship or drive or drift or lead or haul or truck or otherwise move any cattle, horses, mules, jacks, or jennets from any premises, pasture, pen, lot, yard, stock yard farm, ranch, land or enclosure, or from any county or part of county or territory which is under quarantine by virtue of this Act or by any order of the Live Stock Sanitary Commission or by a proclamation of the Governor of the State of Texas because of tick infestation or exposure as provided for in this Act, in violation of said quarantine, without a written permit or certificate of an inspector of the Live Stock Sanitary Commission of Texas or an inspector of the Bureau of Animal Industry, United States Department of Agriculture, or who shall so move into the State of Texas from

any state, nation, territory or area under quarantine for tick infestation or exposure by the said Commission, or by the United States Bureau of Animal Industry or by the Live Stock Sanitary authorities of the state or nation or territory from which they are moved, without a certificate from an inspector of said United States Bureau of Animal Industry, or that having such permit or certificate from an inspector of said Commission shall ship or drive or drift or lead or haul or truck or otherwise move said live stock from said quarantined premises, pasture, pen, lot, yard, stock yard, farm, ranch, land or enclosure, territory, county or part of county to any other place than the place designated by said inspector in said written certificates or permit shall be fined not less than \$25 per head nor more than \$200 per head for each head of such live stock so shipped or drifted or driven or hauled or led or otherwise moved in violation of said quarantine. Any owner, part owner or caretaker of such live stock who shall permit or allow such live stock to drift or to be drifted, shipped, led, hauled or otherwise moved in violation hereof without said permit or certificate shall be deemed guilty of violating this provision the same as if he had personally drifted or driven or shipped or led or hauled or trucked or otherwise moved said live stock. Any person in charge of any movement of live stock upon which said certificate or permit is required, or who is in charge of the vehicle, truck, boat or other conveyance which hauls said live stock, who fails to have in his possession said certificate or permit from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, or any railroad company, express company or other transportation company that fails to attach and keep attached said permit or certificate to the shipping papers accompanying said movement from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, shall be punished as herein provided for violating the quarantine. Railroads and other transportation companies shall also be deemed as having violated this provision, subject to said penalty for each head of cattle, horses, mules, jacks or jennets which they permit to enter any stock pens under their control in the Tick Eradication Area without a written certificate or permit from an inspector of the Live Stock Sanitary Commission or of the Bureau of Animal Industry, United States Department of Agriculture.

Disinfecting Cars by Carriers After Shipment; Penalty

Sec. 22. It shall be the duty of all railroad and transportation companies to clean and disinfect all cars into which any cattle, horses, mules, jacks or jennets have been loaded after the removal of said live stock, unless said live stock are clean and tick-free and are not and have not been subjected to exposure to said tick. After said live stock have been unloaded

from said cars the said cars shall be removed at once to some place designated in the orders of the Live Stock Sanitary Commission for cleaning and disinfecting, and it shall be at some point where the right-of-way of said railroad is fenced. Any railroad or transportation company which shall fail or refuse to clean and disinfect cars in accordance with this provision within seventy-two hours after said unloading, Sundays and legal holidays excepted, shall be fined not less than Fifty Dollars nor more than One Hundred Dollars for each car which they shall fail or refuse to clean and disinfect. Each day, except Sundays and legal holidays, upon which said failure or refusal shall occur, after the expiration of said seventy-two hours, shall constitute a separate offense.

**Maintenance of Tick-Free Stock Yards; Notice and Hearing on Refusal**

Sec. 23. All owners or operators in control of any stock yards in the Tick Eradication Area or in the Free Area, which stock yards are open to the public for yarding, marketing and selling cattle, horses, mules, jacks and jennets, shall maintain clean tick-free pens, alleys, chutes and facilities where such live stock, accompanied by a certificate issued by an inspector of the Live Stock Sanitary Commission showing such live stock to be free of ticks and exposure thereto, may be received, yarded, weighed and sold for intrastate purposes without being subject to exposure to tick infestation, and such live stock shall be afforded all necessary facilities for such purposes, including in addition to tick-free scales for weighing, also tick-free entrances and tick-free exits into and from tick-free pens to the immediate territory surrounding same, and there shall be no discrimination by any stock yards company or owners or operators and persons in control of stock yards between interstate and intrastate handling of live stock in said stock yards, and the Live Stock Sanitary Commission is hereby authorized to enforce the provisions of this Act by written notice to any stock yards company, owners, operators and persons in control of stock yards, designating such facilities as may be necessary for the proper handling in said stock yards of intrastate movements of live stock accompanied by said certificate of inspectors of said Commission. Any stock yards company, owners, operators or persons in charge of stock yards, that fail or refuse to provide and complete such facilities as may be directed by said Commission under authority of this Act within sixty days after the service of said written notice, shall be fined not less than Two Hundred Dollars nor more than Five Hundred Dollars, and each thirty days of such failure or refusal after the expiration of said sixty days shall constitute a separate offense for a period of twenty-four months after the service of said written notice. Additional notices may be issued after the expiration of each twenty-four months, and the penalty herein provided shall apply for failure to comply with the re-

quirements contained in said notices. Hearings may be granted by said Commission upon application, the same as is now provided by law for granting hearings to owners and caretakers who are directed to dip live stock, and owners and operators and persons in control of stock yards are hereby granted sixty days in which to provide and complete said work after the Commission has overruled said application, in case it should be overruled. Any interested person or said Commission may bring Mandatory Injunction to compel a compliance with this provision which may be heard and determined in vacation or term time upon notice to the defendant under direction of the Court.

**Entry on Public or Private Property; Search Warrant on Being Accompanied by Peace Officer**

Sec. 24. All inspectors appointed by the Live Stock Sanitary Commission and helpers and assistants and all members of said Commission and the Chief Inspector thereof, are hereby authorized to enter upon any private or public property for the performance of any duty or exercise of any authority provided in this Act, and said entry shall be made and said duties performed and authority exercised without a search warrant; but if any of said persons desire to be accompanied by any peace officer in making said entry or performing said duty or exercising said authority, it shall be necessary to secure a search warrant from a magistrate of the county in which the said property is located, and it shall be the duty of all magistrates to issue said search warrants upon application of said person, but no warrant shall issue to enter any place or to search for or to seize and dip any live stock thereon without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation. It shall not be necessary to describe said premises by field notes or metes and bounds or other measures, but it will be sufficient if such reasonable description is contained in said search warrant as will inform the owner or person in charge of said property just what premises are covered thereby. The description of such live stock shall consist of reference to the approximate number of head of live stock, stating whether they are cattle, horses, mules, jacks or jennets, and if these facts are not known to affiant he shall state this in said application and said search warrant shall contain said statement. If it is not known to affiant whether there are any live stock thereon and he desires to be accompanied by said peace officers in making a search to ascertain whether there are any live stock thereon, he shall state the same in said application. The said search warrant shall be issued to the applicant and shall authorize him to enter said premises and to be assisted by or accompanied by peace officers and helpers for the purpose of the performance of any duty or exercise of any authority provided for in this Act, and said peace officers and said helpers shall be authorized to perform or discharge any duty authorized under this Act. After the

issuance of said search warrant, any person, firm or corporation that shall refuse to permit said person or any peace officer assisting him or accompanying him or any helpers assisting him or accompanying him, to make said entry or perform any of said duties shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars. Said search warrant shall permit the entry and re-entry of all said persons in the performance of said duties for a period of sixty days after the issuance thereof, and additional search warrants may be issued at any time after the expiration of the time covered by any search warrant. Each day upon which a refusal is made shall be a separate offense.

**Establishing Quarantine and Dipping Animals in Free Area**

Sec. 25. The Live Stock Sanitary Commission is authorized and directed to establish quarantines in the Free Area on account of tick infestation or exposure therein whenever it becomes necessary for the purpose of regulating the handling of live stock and eradicating the tick and exposure thereto in said Free Area or to prevent the spread of tick infestation in said Area, and said Commission is authorized and directed to require the dipping of cattle, horses, mules, jacks and jennets in said Free Area whenever in the discretion of said Commission such becomes necessary for the purpose of insuring that any live stock therein are entirely free from tick infestation, and said Commission shall designate by written order the premises or territory, county or part of county in said Free Area to be quarantined or in which tick eradication is to be conducted. Tick eradication shall be conducted in said Free Area under the same provisions and penalties as provided in this Act for conducting the same in the Tick Eradication Area, and it shall be the duty of County Commissioners, Courts and owners and caretakers of cattle, horses, mules, jacks and jennets located in said Free Area to cooperate with said Commission in tick eradication under the provisions of this Act the same as relate to the Tick Eradication Area whenever tick eradication is required to be conducted in the Free Area. Tick infested and exposed cattle, horses, mules, jacks and jennets and premises in the Free Area are subject to the dipping provision of this Act whether quarantined or not. All quarantines heretofore established by the Live Stock Sanitary Commission in the Free Area under authority of law shall remain in full force and effect after the taking effect of this Act subject to the penalties and provisions of this Act until released by said Commission. Notice of quarantines established in the Free Area shall be given either by delivering written notice to the owner or caretaker of the live stock or to the owner or caretaker of the premises upon which the live stock are located or by posting a written notice of said quarantine at the courthouse door of the county in which said live stock are

located or by publishing said notice in a newspaper published in said county.

**Certificate for Removal of Animals From Quarantine Pastures; Owners' Cooperation with Commission**

Sec. 26. It shall be unlawful for any inspector to issue a certificate or permit for the movement of any cattle, horses, mules, jacks or jennets from any quarantined pastures in the Tick Eradication Area or from any quarantined pasture in the Free Area unless the owner or caretaker of said live stock is cooperating with the Live Stock Sanitary Commission under the direction of said Commission in accordance with the provisions of this Act, in the regular systematic dipping of all cattle, horses, mules, jacks and jennets of which he is owner or caretaker which may be located in the pasture from which said movement is to be made, and is also cooperating in like manner with said Commission in the regular systematic dipping of all other cattle, horses, mules, jacks or jennets of which he is owner or caretaker which may be located in all quarantined pastures in the Tick Eradication Area or Free Area which connect with the pasture from which said movement is to be made, and has dipped all of said live stock in all of said pastures on the last two regular dipping dates in the territory in which said live stock are located next preceding the time said live stock are to be moved. If there are more than one quarantined pastures, connecting with each other, they shall all be considered as connecting with the pasture, from which said live stock are to be moved, if any one of said pastures connects with the pasture from which said movement is to be made. Pastures on opposite sides of lanes and roads shall be considered as connecting, the same as if they were separated only by a fence. If ticks are found upon any of the live stock which are submitted for movement, every head of live stock in said herd which had been so submitted shall be subjected to further dipping at intervals of not less than seven nor more than fourteen days and found free of ticks at the last dipping before said permit or certificate shall be issued. Provision of this Section with reference to "pastures" shall also apply to lots, pens, and other enclosures. Said live stock upon the quarantined open ranges in said Tick Eradication Area or Free Area shall also be subject to these provisions, if the said open range connects with any of said quarantined pastures. The Live Stock Sanitary Commission may, for good cause, waive in writing the enforcement of the provisions of this Section.

**Rules and Regulations as to Movement of Animals**

Sec. 27. The Live Stock Sanitary Commission is hereby directed to adopt rules and regulations providing the conditions and manner and method of handling and moving live stock into, within and from the Tick Eradication Area and local premises and territory therein and the movement and handling of live stock

into and from quarantined premises and territory in the Free Area and the handling and movement of live stock into the released part of the Free Area from other areas. Certificates and permits shall be issued by inspectors only as provided in said rules and regulations showing said live stock to be free of ticks; and when destined to the Free Area or other counties in the Tick Eradication Area or to premises or territory in the same county, which premises or territory are classed by the supervising inspector of the county in his official records as being free from ticks and exposure, said live stock shall also be certified to as being free from exposure and shall move to said destination without exposure. It shall be unlawful for any cattle, horses, mules, jacks, or jennets to be moved from any county or part of county which is designated in this Act as being in the Inactive Quarantined Area or which is designated by the Live Stock Sanitary Commission as being in the Inactive Quarantine Area, unless said live stock have been dipped in an official dipping solution showing a test of twenty two cubic centimeters, as defined and explained in this Act, at least twice at intervals of from seven to fourteen days apart, and said live stock must be found to be free of the tick at the last dipping before making said movement, unless said live stock are to be shipped to a market center where pens for handling tick infested or tick exposed live stock are maintained in accordance with the rules and regulations of the Live Stock Sanitary Commission or to Inactive Quarantined territory or to some official dipping station for official dipping, in accordance with the rules and regulations of the Live Stock Sanitary Commission. If ticks should be found at either of said dippings when the stock is destined to the Free Area or Tick Eradication Area said live stock shall be dipped a sufficient number of times thereafter at said intervals to eradicate said ticks and exposure thereto, and when said live stock are destined to the Free Area or Tick Eradication Area, said live stock must be moved to destination without exposure. Any owner or person in charge of any cattle located in the Inactive Quarantined Area in this State may ship said live stock by rail to any part of the Inactive Quarantined Area in this State, or ship same by rail for immediate slaughter to market centers where the aforesaid pens are maintained, upon one dipping in an official dipping solution showing a test of twenty two cubic centimeters under the supervision of an authorized inspector of the Live Stock Sanitary Commission, said live stock to be loaded and shipped within ten days after said dipping. Where cattle are being shipped to market centers for immediate slaughter or to Inactive Quarantined territory on the said one dipping under provision of this Act, it shall be unlawful to unload any of said live stock en route at any point in the Tick Eradication Area or in the Free Area, except into pens maintained for the purpose of unloading such one-dipped live stock; or if they are trailed or transported

otherwise than by rail, they shall not traverse or enter any territory in the Free Area or Tick Eradication Area. Where a county, part of county, district or territory is in the Inactive Quarantine Area, the movement of cattle other than by rail from premises and lands therein onto other premises and lands in any Inactive Quarantined territory shall be permitted without the necessity of inspection or certification, provided said movement is not made through any territory in the Tick Eradication Area or Free Area. Owners of live stock moving from Inactive Quarantined territory shall furnish all dipping material for dipping said live stock and paint for paint branding them, at their own expense, unless otherwise provided and said Commission shall provide in its rules and regulations for its inspectors to paint brand said live stock for identifying same.

**Civil Action by County Attorney Against Corporation Violating Act**

Sec. 28. Where any corporation violates any provision of this Act, or where any agent of any corporation, acting within the scope of his authority as said agent, shall violate any provision of this Act, it shall be the duty of the County Attorney in the county in which said violation occurs to institute a civil suit on behalf of the State of Texas in a court of competent jurisdiction for the collection of said fine.

**Injunction by Private Resident**

Sec. 29. Any resident of this State may bring injunction suit to compel the compliance with any provision of this Act or restrain any threatened violation of same; and any resident of any county in this State may bring Mandamus proceedings against the County Commissioners Court of said county to compel a compliance with any duty of Commissioners' Courts prescribed in this Act. Said injunctions and Mandamus proceedings may be heard in vacation or term time, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in term time. Notice of said hearing to the opposite party may be given under the direction of the Court, if in the opinion of the Court the ends of Justice require such a notice.

**Illegal Movement in Each County as Separate Offense**

Sec. 30. When any live stock are moved or permitted to move in violation of any quarantine established under provisions of this Act, every county which any of them enter after leaving the county of origin, without the quarantine provisions of this Act having been complied with, shall constitute a separate offense against the person, firm or corporation who moves or allows or permits such movement into other counties; and the person who illegally removed or permitted or allowed the illegal movement of said live stock from the quarantined place or territory in the county of origin shall also be held liable and punishable hereunder for each county which is entered by any

of said live stock during the succeeding thirty days after leaving the county of origin, unless before entering such other county or counties the person in charge of said live stock complied with the provisions of this Act with reference to said live stock. All other persons who move or permit said illegal movement into other counties shall also be held liable.

Chief Veterinarian and Assistants; Penalty for Violating Quarantine

Sec. 31. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Veterinarian and as many assistant veterinarians as it may deem necessary for the eradication and control of contagious, infectious and communicable diseases of live stock, and said Commission may establish quarantines on account of said diseases and any person, firm or corporation who shall violate any quarantines established by said Commission on account of said diseases, except tick fever and scabies, shall be fined not less than Twenty Five Dollars per head nor more than One Hundred Dollars per head, for each head of such live stock moved in violation of said quarantine.

Restrictions on Removal of Materials from Quarantined Areas

Sec. 32. The Live Stock Sanitary Commission may establish necessary quarantines and restrictions on the movement of hay, hides and carcasses from quarantined areas and premises and restrict the use of sand for bedding stock cars except from known tick-free sand pits and regulating the removal and handling of all refuse matter from quarantined stock yards, stock pens and other quarantined places and regulating the handling or removal of dead or injured live stock in transit. Any person, firm or corporation who shall move any hay, hides or carcasses in violation thereof or who shall use any sand for bedding any cars in violation hereof or who shall remove or handle any refuse matter from any quarantined stock yards, stock pens or other quarantined place, or who shall remove from any car or other place or handle any dead or injured live stock in violation of said quarantine or restrictions shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars.

Written Instruments Issued by Commission and Proclamations; Evidence; Identification in Complaint or Indictment Without Setting Out Copies

Sec. 33. Copies of written instruments issued by the Live Stock Sanitary Commission or its Chairman shall be admissible as evidence in any court of this State when said copies are certified by the Chairman of said Commission. Copies of proclamations of the Governor shall be admissible in evidence when certified by the Secretary of State. In prosecutions for violating any provisions of this Act, it shall not be necessary for the State to include in complaints or informations or indictments verbatim copies of any written instruments or proclamations, but it shall only be necessary to allege the issuance thereof with necessary alle-

gation of dates to identify same. In the trial of any case, civil or criminal, in which any of the aforesaid written instruments or proclamations are to be introduced in evidence, it shall not be necessary to file the same with the papers of the cause, nor to give notice to the opposite party. Provided further that proclamations shall become effective as provided in Section Three of this Act, with reference to publishing or posting notice thereof, but if the Live Stock Sanitary Commission has maintained in the conduct of tick eradication under the provisions of this Act, for a period of sixty days or more, one or more inspectors in a county or part of county covered by proclamation of the Governor, after the date stated in said proclamation for the same to become effective, in the dipping of cattle, horses, mules, jacks or jennets in any dipping vat or vats furnished by the county, as herein provided, all quarantines promulgated in said proclamation and also said tick eradication shall become and be in full force and effect in said county or part of county upon the expiration of said sixty days, regardless of whether said proclamation was published or posted. In prosecutions for violations which occur after the expiration of said sixty days, in cases of failure or refusal to dip or for violating any quarantine whether by illegally moving live stock from one point in said county or from other quarantined counties or parts of counties into said county or part of county, it shall not be necessary for the State to allege and prove that said proclamation was published or posted; nor shall it be necessary, after the expiration of said sixty days, in cases where said live stock are moved or permitted or allowed to move from other quarantined counties or parts of counties into said county or part of county, for the State to allege and prove that notice of the Governor's proclamation quarantining said other county or part of county was published or posted. The quarantining of all those counties and parts of counties which are designated in Section 3 of this Act as being in the Inactive Quarantined Area shall become effective upon the taking effect of this Act without the issuance of any proclamation. All proclamations heretofore issued by the Governor under provisions of any former law designating counties and parts of counties for tick eradication, and also such proclamations quarantining counties and parts of counties because of tick infestation, which are still in effect at the time of the taking effect of this Act, shall continue in full force and effect, unless otherwise provided in this Act, subject to the provisions and penalties of this Act without the issuance of proclamations after the passage of this Act. It is hereby expressly provided that all quarantines heretofore established on counties and parts of counties listed in Section 3 of this Act are hereby released, and in lieu thereof said counties and parts of counties are hereby declared to be quarantined upon the taking effect of this Act as provided in Section 3 hereof. In counties and parts of counties in which quarantines are established

or continued and tick eradication designed or continued without the issuance of a proclamation or quarantine notice, as provided in this Act, it shall only be necessary to allege and prove in prosecution that prior to the passage of this Act a proclamation was issued by the Governor for the purpose of tick eradication therein or for establishing said quarantine, and it shall not be necessary to allege and prove the punishing or posting of a notice of said proclamation. All quarantines established by this Act or by the Live Stock Sanitary Commission under the provisions of this Act may be released by the said Commission in writing whenever the same is deemed necessary or advisable.

#### Venue of Prosecutions

Sec. 34. Owners, part owners and caretakers are subject to prosecution in the county in which the live stock and premises are located with reference to which prosecution is instituted, regardless of whether the defendant was in said county at the time of the said issuance and service of said dipping direction or at the time of the said failure or refusal to dip said live stock or at the time of the violation of a quarantine. Wherever the term "Live Stock" occurs in this Act the same shall be construed to mean cattle, horses, mules, jacks and jennets, unless otherwise stated in the Section in which said term is used.

#### Chief Inspector and Other Employees of Commission

Sec. 35. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Inspector, Chief Clerk, stenographers and all necessary clerical help, and such other persons as it may deem necessary for the performance of any duty under this Act or the enforcement of any provision of this Act, and may detail its inspectors and supervisors and other persons for any duty authorized under this Act or incidental thereto or for the purpose of gathering data with reference to violations of this Act and assisting and cooperating with county officials in the enforcement of any and all provisions hereof.

#### Methods of Dipping

Sec. 36. The Live Stock Sanitary Commission may provide in its rules and regulations the manner and method of dipping gentle work and saddle stock and handling and certifying the same for movement, but in the absence of such provisions such stock shall be dipped and handled as is provided in this Act for the dipping and handling of all said live stock.

#### Penalty for Failure to Gather Live Stock at Place for Inspection

Sec. 37. Owners, part owners and caretakers who fail to gather their live stock for inspection at the place and time directed in writing by the Live Stock Sanitary Commission shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. Such written notice shall be served upon the said person at least twelve days in advance of

the date of said inspection and said person is entitled to a hearing before the Live Stock Sanitary Commission under the same provision contained in this Act where dipping directions are served.

[Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53; Acts 1967, 60th Leg., p. 517, ch. 222, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 14, ch. 6, § 1, eff. March 4, 1969; Acts 1973, 63rd Leg., p. 1773, ch. 649, § 3, eff. June 16, 1973.]

### Art. 7014g-2. Transportation of Animals and Products Under Quarantine Because of Fever Tick and Screwworm Infestation; Treatment and Certification

#### Transportation into State; Fever Tick Infestation; Dipping Animals; Certification

Sec. 1. No person, firm, corporation or carrier shall move or transport or cause to be moved or transported in any manner into, across or through the State of Texas, from any area of another state, territory or foreign country which is under State or Federal Quarantine on account of fever tick infestation therein, any cattle, horses, mules, jacks, jennets, goats, sheep, hogs, exotic or circus animals unless such livestock have been dipped free of infestation or exposure thereto and are certified as having been so treated by an authorized inspector of the Animal Disease Eradication Division of the United States Department of Agriculture or of the Texas Animal Health Commission. A copy of said certificate shall accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

#### Transportation into State; Screwworm Infestation; Treatment; Certification

Sec. 2. No person, firm, corporation or carrier shall move or transport or cause to be moved or transported in any manner into, across, or through the State of Texas, from any area of another state, territory or foreign country which is under State or Federal Quarantine on account of screwworm infestation therein, any cattle, horses, mules, jacks, jennets, goats, sheep, hogs, exotic or circus animals unless such livestock have been treated in a manner recognized by the Animal Disease Eradication Division of the United States Department of Agriculture and the Texas Animal Health Commission for the Eradication of Screwworm infestation and are certified as having been so treated and are free of screwworm infestation by an authorized inspector of the Animal Disease Eradication Division of the United States Department of Agriculture or of the Texas Animal Health Commission. A copy of said certificate shall accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

#### Transportation of Products into State; Fever Tick Infestation; Treatment; Certification

Sec. 3. No person, firm, corporation or carrier shall move or transport or cause to be moved or transported in any manner into, across or through the State of Texas, from any

area of another state, territory or foreign country which is under State or Federal Quarantine on account of fever tick infestation therein, any hay, straw, grasses, packing straw, pine straw, corn shucks, weeds, plants, litter, manure, dirt, posts, sand, gravel, caliche, or animal by-products for any purpose unless such product or products have been treated in accordance with the requirements of the Texas Animal Health Commission or the Animal Disease Eradication Division of the United States Department of Agriculture and are so certified as having been so treated by an authorized inspector of the Animal Disease Eradication Division of the United States Department of Agriculture or of the Texas Animal Health Commission. A copy of such certificate shall accompany such products to their final desti-

nation in Texas or so long as they are moving through Texas.

Penalty

Sec. 4. Any person, firm or corporation who violates any provision of this Act shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than \$50 nor more than \$200, and the movement of each animal, each animal product or each shipment of hay, straw or other article enumerated herein shall constitute a separate offense.

[Acts 1961, 57th Leg., p. 230, ch. 118, eff. May 15, 1961; Acts 1967, 60th Leg., p. 518, ch. 222, § 2, eff. Aug. 28, 1967.]

Arts. 7015 to 7040. Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38

## TITLE 122

### TAXATION

*For text of Title 122, Taxation, see  
Volume 2.*

## TITLE 122A

### TAXATION-GENERAL

*For text of Title 122A, Taxation-General,  
see Volume 2.*

# TITLE 123

## TIMBER

### Article

- 7360. Log Brands.
- 7361. To be Recorded.
- 7361a. Log Brand.
- 7362. Written Report to be Filed.
- 7362a. Shall Make Report of Logs Cut, etc.
- 7363. Evidence of Ownership.
- 7363a. Bill of Sale Required in Buying Logs or Pulp Wood; Verified Statement Respecting Staves or Cross Ties; Penalty for Violation.
- 7363b. Offenses and Definitions.
- 7363.1 Evidence of Ownership.

#### Art. 7360. Log Brands

Whoever engages in floating or rafting timber upon the waters of any river or creek of this State shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded.

[Acts 1925, S.B. 84.]

#### Art. 7361. To be Recorded

He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 7361a. Log Brand

Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded, and shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk in a book to be kept by said clerk for that purpose.

[1925 P.C.]

#### Art. 7362. Written Report to be Filed

Any person who floats any logs or timber in this State shall, on the first day of April, first day of July, first day of September, and on the

first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same. This law shall not apply to pickets, posts, rails or firewood.

[Acts 1925, S.B. 84.]

#### Repeals

*Acts 1971, 62nd Leg., p. 2722, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

#### Art. 7362a. Shall Make Report of Logs Cut, etc.

Any persons who float any logs or timber in this State shall on the first day of April, July, October, and January of each year, or within fifteen days of such dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut, and such clerk shall record and index the same in a book kept for that purpose. This article shall not apply to pickets, posts, rails or firewood.

[1925 P.C.]

#### Art. 7363. Evidence of Ownership

A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom transfer is made owns the logs described thereon.

[Acts 1925, S.B. 84.]

**Art. 7363a. Bill of Sale Required in Buying Logs or Pulp Wood; Verified Statement Respecting Staves or Cross Ties; Penalty for Violation**

Sec. 1. Every person, firm, partnership or corporation shall require, before purchasing any trees or timber in the form of logs or pulp wood, a bill of sale therefor to be executed and acknowledged by the seller, in the manner required by law for registration thereof, and such bill of sale shall contain the name and address of such seller and purchaser, a description of the survey or tract of land from which such logs or pulp wood were cut, the number of logs or pulp wood, and the markings, if any, thereon; provided further, that any notarial, filing fees, or other expenses in connection with such bill of sale, shall be assumed and paid by the purchaser; provided, however, that a purchaser of staves or cross ties not securing a bill of sale or deed to same shall on or before the tenth day of each succeeding month from date of purchase file with the County Clerk of the county in which the land from which said staves or cross ties were cut, is situated, a verified statement containing among other things the name and address of the seller and purchaser, a description of the survey or tract of land from which such staves or cross ties, or any of them, were cut, the number of staves or cross ties and the markings, if any, thereon contained, which verified statement shall be kept by the County Clerk as a record for public inspection for a period of not less than two (2) years, and for which a filing fee not exceeding Ten (10¢) Cents shall be charged. The provisions of this Act shall not apply to the sale of finished lumber or cedar staves, nor shall the same apply to wood or posts.

Sec. 2. Every seller and purchaser who fails to see that such bill of sale as above provided for is given in any such sale, or any purchaser not securing a bill of sale who fails to file the statement as provided for hereinabove, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not to exceed One Hundred (\$100.00) Dollars, or imprisonment of not more than thirty (30) days in jail in the county jail, or both.

[Acts 1939, 46th Leg., p. 243.]

**Repeal**

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

**Art. 7363b. Offenses and Definitions**

Whoever shall buy or sell any timber or log floating or that has been floated in this State, before the same has been branded, shall be fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. Whoever shall float any unbranded log or timber for market, or who shall fail to make the reports required under article 1386,<sup>1</sup> or who shall brand any log or timber of another without his authority, or who shall deface any brand on any log or timber otherwise than when it is in the act of being sawed or manufactured into lumber or other commodity for use in building, or any person not an employé of the owner, who shall without the written consent of the owner, take into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber or shingle floating in any of the waters of this State, or deposited upon the banks of any river or stream in this State, shall be fined not exceeding two hundred dollars for each offense. The accused may be prosecuted in any county in which the timber or lumber was deposited in the water, or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased or branded. By "lumber" is meant lumber attached or bound together in some way for floating, and not loose lumber; and by "shingles" is meant shingles in bunches or bundles, and not loose shingles.

[1925 P.C.]

<sup>1</sup> See, now, article 7362a.

**Art. 7363.1 Evidence of Ownership**

A certificate, under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it, signed and acknowledged by such owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon.

[1925 P.C.]

## TITLE 124

### TRESPASS TO TRY TITLE

#### 1. THE PLEADINGS AND PRACTICE

##### Article

7364. Method of Trying Titles.  
7365 to 7374. Repealed.  
7375. What is Sufficient Title.  
7376 to 7388. Repealed.  
7389. Damages.  
7390. Repealed.  
7391. Final Judgment Conclusive.  
7392. Former Laws Shall Govern, When.

#### 2. CLAIM FOR IMPROVEMENTS

7393. Claim of Improvements.  
7394. Issue as to.  
7395. Rents and Profits as Offset.  
7396. Judgment for Excess.  
7397. Writ of Possession.  
7398. Failure of Plaintiff to Pay.  
7399. Defendant Failing to Pay.  
7400. Repealed.  
7401. Duty of the Clerk.  
7401. Removal of Improvements.

#### 1. THE PLEADINGS AND PRACTICE

##### Art. 7364. Method of Trying Titles

All fictitious proceedings in the action of ejectment are abolished. The method of trying titles to lands, tenements or other real property shall be by action of trespass to try title.

[Acts 1925, S.B. 84.]

##### Arts. 7365 to 7374. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

##### Art. 7375. What is Sufficient Title

All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this State, which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title.

[Acts 1925, S.B. 84.]

##### Arts. 7376 to 7388. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

##### Art. 7389. Damages

Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use

and occupation or for injuries done over two years prior to the commencement of the suit.  
[Acts 1925, S.B. 84.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1).  
See Rule 805, Rules of Civil Procedure.*

##### Art. 7390. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

##### Art. 7391. Final Judgment Conclusive

Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

[Acts 1925, S.B. 84.]

##### Art. 7392. Former Laws Shall Govern, When

Nothing in this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected.

[Acts 1925, S.B. 84.]

#### 2. CLAIM FOR IMPROVEMENTS

##### Art. 7393. Claim of Improvements

The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim.

[Acts 1925, S.B. 84.]

##### Art. 7394. Issue as to

Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors

thereof in good faith, the court or jury shall at the same time estimate from the testimony:

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 7395. Rents and Profits as Offset

If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

[Acts 1925, S.B. 84.]

#### Art. 7396. Judgment for Excess

If it shall appear from the finding of the court or jury under the two preceding articles that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

[Acts 1925, S.B. 84.]

#### Art. 7397. Writ of Possession

In any action of trespass to try title, when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon.

[Acts 1925, S.B. 84.]

#### Art. 7398. Failure of Plaintiff to Pay

If the plaintiff shall neglect for the term of one year to pay the amount of said judgment in favor of the defendant, with the interest thereon as directed in the preceding article, and the defendant shall within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements, without regard to the improvements as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

[Acts 1925, S.B. 84.]

#### Art. 7399. Defendant Failing to Pay

If the defendant or his legal representatives shall not, within six months aforesaid, pay to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

[Acts 1925, S.B. 84.]

#### Art. 7400. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1.)

#### Art. 7401. Duty of the Clerk

If payment is made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, such clerk shall enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 7401A. Removal of Improvements

Sec. 1. In an action of trespass to try title, the defendant may in his pleadings:

(1) allege that he and those under whom he claims have had adverse possession of the premises in controversy without the intent to defraud, and that he and those under whom he claims have made permanent and valuable improvements on the land during the time they have had possession, without the intent to defraud;

(2) identify the improvements; and

(3) include in his prayer for relief a prayer for judgment allowing the defendant, in the event the court or jury finds that he is not the rightful owner of the land, to remove the improvements upon giving a good and sufficient surety bond, in such amount as the court deems proper under the circumstances, conditioned upon the defendant's removal of the improvements in such a manner as to restore the land to substantially the same condition as that which obtained before the improvements were made.

Sec. 2. If the defendant has pleaded as provided in Section 1 of this article and the court or jury finds that he is not the rightful owner of the land, but that he and those under whom he claims, being possessors of the land without the intent to defraud, have made permanent and valuable improvements on the land without the intent to defraud, then the court or jury shall at the same time determine whether or not the improvements can be removed without substantial and permanent damage to the land.

Sec. 3. If the court or jury determines that the improvements can be removed without substantial and permanent damage to the land, then the court shall fix the amount of the surety bond, and, upon the defendant's giving of a bond in that amount, conditioned as stated in Section 1 of this article, the court shall appoint a referee to supervise the removal of the improvements and to make such reports to the

court as the court may direct. The court shall retain jurisdiction of the suit and make final disposition of the case and determine the rights, duties, and liabilities of the parties and sureties consistent with the relevant principles of law and equity.

Sec. 4. The court may condition the defendant's right to remove the improvements on the satisfaction of any money judgment in favor of the plaintiff arising out of any claim of the plaintiff in the suit.

Sec. 5. The remedy provided by this article is cumulative of all other remedies provided by this title and by other applicable statutes and rules of law and equity, and the defendant may plead for this remedy as an alternative to any other remedy to which he may be entitled.

[Acts 1967, 60th Leg., p. 2024, ch. 748, § 1, eff. Aug. 28, 1967.]

## TITLE 125

### TRIAL OF RIGHT OF PROPERTY

#### Article

7402 to 7408. Repealed.

7409. Jurisdiction.

7410 to 7416. Repealed.

7417. Damages.

7418. If Value of Property Exceeds Judgment.

7419 to 7425. Repealed.

Arts. 7402 to 7408. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 7409. Jurisdiction

Cases arising under this chapter shall be tried in courts having jurisdiction of the amount involved.

[Acts 1925, S.B. 84.]

Arts. 7410 to 7416. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 7417. Damages

In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property.

[Acts 1925, S.B. 84.]

#### Art. 7418. If Value of Property Exceeds Judgment

When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ.

[Acts 1925, S.B. 84.]

Arts. 7419 to 7425. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

# TITLE 125A

## TRUSTS AND TRUSTEES

### IN GENERAL

<b>Article</b>	
7425a.	Conveyance by Trustees.
7425a-1.	Charitable Trusts; Appointment of Trustees; Vacancies; Absence of Agreement.
7425a-2.	Employment of Banks by Fiduciaries as Custodians of Securities.
7425b.	Payment of Money to Trustees.

### TEXAS TRUST ACT

7425b-1.	Short Title.
7425b-2.	Definition of Trust.
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7425b-4.	General Definitions.
7425b-5.	Person Entitled to Possession, Rents and Profits Has Legal Estate.
7425b-6.	Active Trust Valid.
7425b-7.	Requisites of a Trust.
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7425b-9.	Payment of Money to Trustees.
7425b-10.	Loan of Trust Funds.
7425b-11.	Corporate Trustee Depositing Trust Funds With Self.
7425b-12.	Trustee Buying from or Selling to Self.
7425b-13.	Trustee Selling from One Trust to Another Trust.
7425b-14.	Corporate Trustee Buying Its Own Stock.
7425b-15.	Voting Stock.
7425b-16.	Holding Stock in Name of Nominee.
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7425b-19.	Contracts of Trustee.
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7425b-21.	Tort Liability of Trust Estate.
7425b-22.	Power of Trustor.
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7425b-26.	Right of Trustee to Determine Principal and Income.
7425b-27.	Income and Principal—Disposition.
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7425b-31.	Principal Used in Business.
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7425b-34.	Principal Subject to Depletion.
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7425b-36.	Expenses—Trust Estate.
7425b-37.	Death of Trustee; Duty of Court.
7425b-38.	Resignation of Trustee.
7425b-39.	Removal of Trustee.
7425b-40.	Power and Duties of Successor Trustees.
7425b-41.	Revocable Unless Expressly Made Irrevocable.
7425b-42.	Grantor May Direct Disposition on Failure on Trust.
7425b-43.	Legal Estate in Grantee Subject to Trust.
7425b-44.	Status of Estate Not Disposed of.
7425b-45.	Re-instating Common Law.
7425b-46.	Investment Powers of Trustee.
7425b-47.	Constitutionality.

### UNIFORM COMMON TRUST FUND ACT

7425b-48.	Uniform Common Trust Fund Act.
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### Article

7425b-48a.	Incorporation of Uniform Common Trust Fund Act as Part of Texas Trust Act.
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### POWERS

7425c.	Release of Powers of Appointment.
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### PENSION TRUSTS

7425d.	Pension Trusts.
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### CHARITABLE TRUSTS

7425e.	Amendment of Charitable Trusts.
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### IN GENERAL

#### Art. 7425a. Conveyance by Trustees

Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer or encumbrance shall not thereafter be questioned by any one claiming as a beneficiary under such trust or by any one claiming by, through, or under an undisclosed beneficiary, provided that none of the trust property in the hands of said trustee shall be liable for personal obligations of said trustee.

[Acts 1925, 39th Leg., ch. 120, p. 305, § 1.]

#### Art. 7425a-1. Charitable Trusts; Appointment of Trustees; Vacancies; Absence of Agreement

If a vacancy occurs in the number of trustees originally appointed under a valid charitable trust agreement and the trust agreement does not provide for filling such vacancy, then the vacancy may, at the discretion of the remaining trustees, be filled upon the affirmative vote of a majority of the remaining trustees.

[Acts 1969, 61st Leg., 2nd C.S., p. 116, ch. 9, § 1, eff. Sept. 19, 1969.]

#### Art. 7425a-2. Employment of Banks by Fiduciaries as Custodians of Securities

Sec. 1. In this Act, unless the context requires a different definition, "fiduciary" means an executor, administrator, trustees of express trusts, including a corporation or a natural person acting as a fiduciary, and a successor or substitute fiduciary, whether designated in a trust instrument or not.

Sec. 2. (A) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent or-

der or decree, or in the will, deed or other instrument, every fiduciary is authorized to employ any bank incorporated in this state or any national bank located in this state as custodian of any stock or other securities held as a fiduciary, and the cost thereof, except in the case of a corporate fiduciary, shall be a charge upon the estate or trust. The records of such bank shall at all times show the ownership of such stock or other securities. Such stock or other securities shall at all times be kept separate from the assets of such bank and may be kept by such bank

(1) in a manner such that all certificates representing the securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(2) in a manner such that, without certification as to ownership attached, certificates representing securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a bank when operating under the method of safekeeping security certificates described in this subparagraph (2), shall be subject to such rules and regulations as, in the case of state chartered institutions, the State Finance Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. Such bank shall on demand by the fiduciary, certify in writing the securities held by it for such estate, trust or fiduciary account.

(B) Every fiduciary is authorized to cause any stock or other securities (hereinafter referred to as "securities") held by any bank, when acting as fiduciary, whether alone or jointly with an individual, with the consent of the individual fiduciary, if any (who is hereby authorized to give such consent), to be registered and held in the name of a nominee of such bank without disclosure of the fiduciary relationship; and, in the case of an individual acting as fiduciary, to direct any bank located in this state to register and hold any securities deposited with such bank in the name of a nominee of such bank. The bank shall not redeliver such securities to the individual fiduciary, who authorized their registration in the name of a nominee of the bank, without first registering the securities in the name of the individual fiduciary, as such. But, any sale of such securities by the bank at the direction of the individual fiduciary shall not be treated as a redelivery. The bank may make any disposition of such securities which is authorized or directed by an order or decree of the court having jurisdiction of the estate or trust. Any such bank shall be liable for any loss occa-

sioned by the acts of its nominee with respect to the securities so registered. The records of the bank shall at all times show the ownership of any such securities and of those held in bearer form. Such securities and those held in bearer form shall at all times be kept separate from the assets of the bank and may be kept by such bank

(1) in a manner such that all certificates representing the securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(2) in a manner such that, without certification as to ownership attached, certificates representing securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a bank, when operating under the method of safekeeping security certificates described in this subparagraph (2), shall be subject to such rules and regulations as, in the case of state chartered institutions, the State Finance Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. Such bank shall, on demand by any party to an accounting by such bank as fiduciary or on demand by the attorney for such party, certify in writing the securities held by such bank as such fiduciary.

Sec. 3. This Act shall be regarded as permissive and shall be cumulative of all the general laws on the subject.

[Acts 1971, 62nd Leg., p. 3037, ch. 1002, eff. Aug. 30, 1971.]

#### Art. 7425b. Payment of Money to Trustees

Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money so paid.

[Acts 1925, 39th Leg., ch. 120, p. 305, § 2.]

### TEXAS TRUST ACT

#### Art. 7425b-1. Short Title

This Act may be cited as the Texas Trust Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 1.]

#### Art. 7425b-2. Definition of Trust

"Trust" for the purpose of this Act means an express trust only, and does not include (1) re-

sulting or constructive trusts, (2) so-called "Massachusetts Trusts" or similar business trusts, (3) security instruments such as deeds of trust, mortgages and conditional sales contracts, (4) instruments wherein one or more persons are mere nominees for one or more persons without any disclosed beneficiaries and without any active trust duties.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 2; Acts 1945, 49th Leg., p. 109, ch. 77, § 1.]

#### Art. 7425b-3. Purposes and Capacities

A trust in relation to, or consisting of, real, personal or mixed property may be created or established for any use or purpose which is not illegal. A person has the same capacity to create a trust by declaration, transfer inter vivos, devise, bequest or appointment that he has to transfer, devise, bequeath or appoint free of trust. A person has capacity to create a trust by making a promise to another person whose rights against the promisor are to be held in trust for a third person, to the same extent that he has capacity to make a contract.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 3; Acts 1945, 49th Leg., p. 109, ch. 77, § 2.]

#### Art. 7425b-4. General Definitions

As used in this Act unless the context or subject-matter otherwise requires:

A. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.

B. "Trustor" means the maker, creator, donor, settlor, grantor, of a trust and the testator or testatrix of a will containing trust provisions.

C. "Trustee" as constituted in Section 7 hereof, includes trustees, a corporate as well as a natural person and a successor or substitute trustee.

D. "Relative" means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, or sister.

E. "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

F. "Principal" means any real or personal property which has been so set aside or limited by the owner thereof, or a person thereto, legally empowered that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof, or any part of such return or use is in the meantime to be taken or received by or

held for accumulation for the same or another person.

G. "Income" means the return derived from principal.

H. "Tenant" means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

I. "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

J. "Beneficiary" means any person entitled to receive from a trust any benefit of whatsoever kind or character.

K. "Trustee's compensation," as used in this Act, means the normal, recurring fee of the trustee for services in the management and administration of the trust estate, irrespective of the manner of computation of such fee. "Trustee's commission," as used in this Act, means the fee of the trustee for services rendered, other than in the normal management and administration of the trust estate, and includes extraordinary and unusual services, remuneration of the trustee for acceptance of the trust, distribution of the trust properties, termination of the trust estate, and all other fees of similar nature, as distinguished from regularly recurring compensation for the usual and ordinary management and supervision of the trust estate by the trustee.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 4.]

#### Art. 7425b-5. Person Entitled to Possession, Rents and Profits Has Legal Estate

Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipts of the rents and profits thereof, is deemed to have a legal estate therein, of the same quality, extent, and duration, and subject to the same conditions as his beneficial interest therein.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 5.]

#### Art. 7425b-6. Active Trust Valid

The last preceding section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with or subject to some power of actual disposition or management in relation to the real property, which is the subject of the trust.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 6.]

#### Art. 7425b-7. Requisites of a Trust

An express trust may be created by one of the following means or methods:

A. A declaration in writing by the owner of the property that he holds it as trust-

tee for another person, or persons, or for himself and another person or persons; or

B. A written transfer inter vivos by the owner of property to another person as trustee for the transferor or for a third person or persons; or

C. A transfer by will by the owner of property to another person or persons as trustee for a third person or persons; provided that a natural person as trustee may be a beneficiary of any such trust.

D. An appointment by a person having a power of appointment to another person as trustee for the donee of the power or for a third person; or

E. A promise by a person to another person whose rights thereunder are to be held in trust for a third person; or

F. A beneficiary may be a co-trustee and the legal and equitable title to the trust estate shall not merge by reason thereof.

Provided, however, that a trust in relation to or consisting of real property shall be invalid, unless created, established, or declared:

1. By a written instrument subscribed by the trustor or by his agent thereunto duly authorized by writing;

2. By any other instrument under which the trustee claims the estate affected.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 7; Acts 1945, 49th Leg., p. 109, ch. 77, § 3.]

#### Art. 7425b-8. Conveyance by Trustees

Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer or encumbrance shall not thereafter be questioned by any one claiming as a beneficiary under such trust or by any one claiming by, through, or under an undisclosed beneficiary, provided that none of the trust property in the hands of said trustee shall be liable for personal obligations of said trustee. (Article 7425a, R.C.S. of Texas.)

[Acts 1943, 48th Leg., p. 232, ch. 148, § 8.]

#### Art. 7425b-9. Payment of Money to Trustees

Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of

a misapplication by the trustee of the money so paid. (Article 7425b, R.C.S. of Texas.)

[Acts 1943, 48th Leg., p. 232, ch. 148, § 9.]

#### Art. 7425b-10. Loan of Trust Funds

Except as provided in Section 11 of this Act, a corporate trustee shall not lend trust funds to itself or an affiliate (as defined herein), or to any director, officer or employee of itself or of an affiliate; nor shall any noncorporate trustee lend trust funds to himself, or to his relative, employer, employee, partner, or other business associate; provided, however, that nothing contained in this Act shall prohibit any trustee from lending such funds to any beneficiary of a trust when so authorized or directed by the express terms of the instrument or transaction by which such trust was established.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 10; Acts 1963, 58th Leg., p. 133, ch. 80, § 1.]

#### Art. 7425b-11. Corporate Trustee Depositing Trust Funds With Self

A corporate trustee may deposit with itself trust funds which are being held pending investment, distribution, or to pay debts, provided it maintains under control of its trust department (if it has a trust department separate from its banking department) as security for such deposit a separate fund consisting of securities legal for trust investments which have at all times during the deposit a total market value equal to the amount of the deposit. No such security shall be required to the extent said deposit is insured or otherwise secured by or under state or federal law. The separate fund of securities shall be marked as such. Withdrawals from or additions to it may be made from time to time, as long as the required value is maintained. The income of such securities shall belong to the corporate trustee.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 11.]

#### Art. 7425b-12. Trustee Buying from or Selling to Self

A trustee shall not buy or sell, either directly or indirectly, any property owned by or belonging to the trust estate, from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee, or of an affiliate; or from or to himself, a relative, employer, partner or other business associate; provided a national banking association, or a state chartered bank and trust company, or a state chartered trust company, or a state chartered bank having trust powers, or any other state chartered corporation having the right to exercise trust powers, when acting or serving as executor, administrator, guardian, trustee, or receiver, may sell shares of the capital stock of itself so owned or held by itself, for any estate, to one or more of its officers, or directors, upon a court of competent jurisdiction finding that any such sale will be to the best interest of the estate owning such shares; fixing or approv-

ing the price to be paid therefor, and the terms of sale, and upon entering an order, decree or judgment, authorizing, approving and directing such sale to be made; and provided further, that a corporate trustee, executor, administrator, or guardian, when authorized by will, trust agreement, other trust instrument, or judicial order to retain its own capital stock in trust, may exercise rights to purchase its own stock when increases in its capital stock are offered pro rata to stockholders; and, when the exercise of rights or the receipt of a stock dividend results in a fractional share holding, may purchase an additional fractional share (or shares) to round out the fractional share so acquired into one full share; provided, moreover, that such exercise of rights, or purchase of fractional shares, in the circumstances then prevailing, shall be consistent with the judgment and care which men of ordinary prudence exercise in the management of their own affairs.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 12; Acts 1945, 49th Leg., p. 109, ch. 77, § 4; Acts 1965, 59th Leg., p. 560, ch. 284, § 1, eff. May 31, 1965; Acts 1973, 63rd Leg., p. 484, ch. 210, § 1, eff. May 26, 1973.]

#### Art. 7425b-13. Trustee Selling from One Trust to Another Trust

A trustee shall not as trustee of one trust sell property to another trust estate of which it is trustee, except bonds, notes, bills and other obligations issued, or fully guaranteed as to both principal and interest, by the United States of America, which may be so sold and transferred by the trustee, from one trust estate to another, at the current market price.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 13.]

#### Art. 7425b-14. Corporate Trustee Buying Its Own Stock

A corporate trustee shall not purchase for a trust, shares of its own stock, or its bonds, obligations, or other securities, or the stock, bonds, obligations, or other securities of an affiliate (as defined herein). A noncorporate trustee shall not purchase for a trust the stock, bonds, obligations, or other securities of a corporation with which such trustee is connected as director, owner, manager, or in an executive or official capacity.

This Section shall not prohibit the retention of shares of stock already owned by the trust estate if such retention satisfies the provisions of Section 46 hereof, nor the exercise of stock rights, nor purchase of fractional shares, as permitted by Section 12 hereof, as amended from time to time.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 14; Acts 1945, 49th Leg., p. 109, ch. 77, § 5; Acts 1965, 59th Leg., p. 560, ch. 284, § 2, eff. May 31, 1965.]

#### Art. 7425b-15. Voting Stock

A trustee owning corporate stock may vote it by proxy, without power of substitution, in favor of one or more persons, or the survivors of them, and the trustee, in the absence of bad faith or gross negligence in selecting the person or persons to whom any proxy, either limit-

ed or unlimited, is given, shall not be liable for any financial loss resulting to the trust estate or the beneficiaries thereof in deciding how to vote the stock and in the voting of it.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 15.]

#### Art. 7425b-16. Holding Stock in Name of Nominee

A trustee owning stock or property may hold same in the name of a nominee, without mention of the trust in the stock certificate or stock registration book, or other evidence of the title to such property; provided that:

A. The trust records and all reports or accounts rendered by the trustee clearly show the ownership of the stock or property by the trustee, and the facts regarding its holdings; and

B. The nominee deposits with the trustee a signed statement showing the trust ownership, endorses the stock certificate in blank, or executes an appropriate stock-power in blank and attaches thereto, or executes a conveyance or assignment of the title to said property, and does not have possession of the stock certificate or property or access thereto except under the immediate supervision of the trustee.

No such registration or holding shall relieve the trustee of liability for any loss to the trust resulting from any improper act of such nominee in connection with securities or properties so held.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 16.]

#### Art. 7425b-17. Powers Attached to Office

Unless otherwise expressly provided in this Act or by the trust instrument, or an amendment thereof, or by court order, the exercise of all powers and discretions of a trustee shall be inherent in the office and shall not be personal.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 17.]

#### Art. 7425b-18. Powers Exercisable by Majority: Survivor May Execute Trust

Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order:

A. Any power vested in three or more trustees may be exercised by a majority of such trustees; but a trustee who has not joined in exercising a power shall not be liable to the beneficiaries or to others for the consequences of such exercise, nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of the majority trustees, if he expressed his dissent in writing to any of his co-trustees at or before the time of such joinder.

B. Where two or more trustees are appointed by will or a voluntary trust to execute a trust and one or more of them die, the surviving trustee or trustees may execute the trust and may exercise the discre-

tionary powers given to the trustees jointly, unless the terms of the will or agreement expressly provide to the contrary.

C. Nothing in this section shall excuse a co-trustee from liability for failure to discharge his duties as trustee.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 18.]

#### Art. 7425b-19. Contracts of Trustee

Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action arises thereon:

A. The party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectible by execution out of the trust property. In such an action the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

B. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of such action, or within such other time as the court may fix, and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present or contingent interest, or in the case of a charitable trust the Attorney General of Texas and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof by registered mail addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the beneficiaries or persons having an interest in the trust estate, and their addresses, if their whereabouts are known to the trustee, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section.

Any beneficiary, or in the case of charitable trusts the Attorney General of Texas, and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

C. The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word "trustee" or the words "as trustee" after the signature of a

trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 19.]

#### Art. 7425b-20. Exoneration or Reimbursement for Torts

A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property:

A. If he has not discharged the claim, or to be reimbursed therefor out of trust funds if he has paid the claim; if

1. The tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust; or

2. Although the tort was not a common incident of such activity, if neither the trustee nor any officer or employee of the trustee was guilty of actionable negligence in incurring the liability.

B. If a trustee commits a tort which increases the value of the trust property, he shall be entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though he would not otherwise be entitled to exoneration or reimbursement.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 20.]

#### Art. 7425b-21. Tort Liability of Trust Estate

Where a trustee or his predecessor has incurred personal liability for a tort committed in the course of his administration:

A. The trustee in his representative capacity may be sued and collection had from the trust property, if the court shall determine in such action:

1. That the tort was a common incident of the kind of business activity in which the trustee or his predecessor was properly engaged for the trust; or

2. That although the tort was not a common incident of such activity neither the trustee nor his predecessor, nor any officer or employee of the trustee or his predecessor, was guilty of actionable negligence in incurring the liability; or

3. That although the tort did not fall within classes 1 or 2 above, it increased the value of the trust property.

If the tort is within classes 1 or 2 above, collection may be had of the full amount of damage proved; and if the tort is within class 3 above, collection may be had only to the extent of the permanent increases in the value of the trust property.

B. In an action against the trustee in his representative capacity under this section the plaintiff need not prove that the

trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

C. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of the action, or within such other period as the court may fix and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee, who then had a present or contingent interest of the existence and nature of the action. Such notice shall be given by registered mail addressed to such beneficiaries at their last known addresses. The trustee shall furnish the plaintiff a list of such beneficiaries and their addresses, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section. Any beneficiary may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

D. The trustee may also be held personally liable for any tort committed by him, or his agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement provided in Section 20 of this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 21.]

#### Art. 7425b-22. Power of Trustor

The trustor of any trust affected by this Act may, by provisions in the instrument creating the trust, or by an amendment of the trust if the trustor reserved the power to amend the trust, relieve his trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed upon him by this Act; or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by this Act; or add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this Act; but no act of the trustor shall relieve a corporate trustee from the duties, restrictions, and liabilities imposed upon it by Sections 10, 11, and 12 of this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 22.]

#### Art. 7425b-23. Power of Beneficiary

Any beneficiary of a trust affected by this Act may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee, relieve the trustee as to such beneficiary from any or all of the duties, restrictions, responsibilities and liabilities which would otherwise be imposed on the trustee by this Act, including the release of the trustee from any or all liability to such beneficiary for past violations of any of the provisions of the Act, except as to the duties, re-

strictions, and liabilities imposed on corporate trustees by Sections 10, 11, and 12 herein.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 23.]

#### Art. 7425b-24. Power of the Court

A. The district court shall have original jurisdiction to construe the provisions of any trust instrument; to determine the law applicable thereto; the powers, responsibilities, duties, and liability of trustee; the existence or non-existence of facts affecting the administration of the trust estate; to require accounting by trustee; and to surcharge trustee.

B. In cases where there be a single trustee, the venue of such actions shall be in the county of the residence of such trustee; or if a corporation, in the county of its principal place of business. Where there are two or more trustees, then the venue shall be in the county where the principal office of the trust is maintained.

C. Actions hereunder may be brought by a trustee, beneficiary, or any person affected by or having an active interest in the administration of the trust estate. If the action is predicated upon any act or obligation of any beneficiary, such beneficiary shall be a necessary party to the proceedings. The only necessary parties to such actions shall be those persons designated by name in the instrument creating the trust, and any persons who may be actually receiving distributions from the trust estate at the time the action is filed; contingent beneficiaries designated as a class shall not be necessary parties.

D. Except as otherwise provided herein, the provisions of the statutes and rules of court governing civil procedure, commencement of action, process, process by publication, appointment of guardians ad litem, supersedeas and appeal, shall govern all actions and proceedings instituted under the provisions of this Act.

E. A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties, limitations, and restrictions which would otherwise be placed upon him by this Act, or wholly or partly release and excuse a trustee, who has acted honestly and reasonably, from liability for violations of the provisions of this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 24.]

#### Art. 7425b-25. Powers, Duties, and Responsibilities of Trustees

In the absence of contrary or limiting provisions in the instrument creating the trust, or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized:

A. To exchange, re-exchange, subdivide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, and/or partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to

public use without consideration if deemed by the trustee to be for the best interest of the trust.

B. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof and/or other property.

C. To grant or take leases of real property for any term of years, and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings, or as to renewals thereof, through the term of the lease or renewals thereof, or of such options extending beyond the term of the trust.

D. To raze existing walls or buildings and/or erect new party walls or buildings alone or jointly with the owners of any adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations, changes, and additions in buildings or other structures which are necessary to make the property productive or more productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount.

E. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless.

F. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or where the trustee deems payment expedient and for the best interests of the trust. To sell or exercise stock subscription or conversion rights, participate in the foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular will, indenture, trust agreement, or other trust instrument, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other secu-

rities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust instrument provides otherwise, from any restrictions on sale or otherwise contained in the trust instrument relative to the securities originally held.

G. Generally to execute and deliver any deed or other instrument and to do all things in relation to such trust necessary, desirable, or advisable for carrying out any of the above powers or those considered incident to the purposes of such trust. In addition to the other rights, powers, and authority granted to and conferred upon the trustee of an express trust by this, The Texas Trust Act, the trustee may sell, exchange, transfer, assign, convey, mortgage, or otherwise encumber, lease, contract for the joint exploration and development of the trust property, with other properties, and otherwise contract with reference to oil, gas, or other minerals or natural resources, and mineral rights and mineral royalties, which may be or become a part of the trust estate, upon such terms and conditions, and for such royalties, rents, benefits, and consideration as the trustee may deem to be to the best interest of the trust estate.

H. Employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate; permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, to invest trust funds in real property to be used for a home by any such beneficiary, and, in the trustee's discretion, to pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of his or her death.

I. The following rules of administration shall be applicable to all express trusts but such rules shall not be exclusive of those otherwise imposed by law, unless the latter be contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of a part thereof, whether the division is horizontal, vertical, or made in any other way, or of undivided interests therein.

2. Where a trustee is authorized by the trust instrument creating the trust or by law to pay, expend, or otherwise apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had the power to raise the money so required by selling, converting, calling in, or mortgaging or

otherwise encumbering all or any part of the trust property for the time being in possession.

3. A trustee shall have a lien, and may reimburse himself with interest, for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the convenience, benefit or protection of the trust or its property, and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of his holding or ownership of any property subject thereto.

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, determines or affects the distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact made prior to the actual knowledge or written notice of such fact.

J. The powers, duties, and responsibilities stated in this Act shall not be deemed to exclude other implied powers, duties, or responsibilities not inconsistent herewith.

K. Pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

L. Unless the instrument creating the trust provides to the contrary, the trustee of any trust created after the effective date of this amendment shall be required to give bond payable to all persons interested in the trust as their interest may appear, conditioned for the faithful performance of the duties as trustee, to be in such amount and with such surety or sureties as the District Court shall, by order entered in a proceeding brought for such purpose, direct and approve. If the proceeding be brought by the person named as trustee, citation in respect thereof shall not be necessary, but the proceeding may be upon ex parte verified petition showing the nature and probable value of the trust estate, and the District Court may, in term time or vacation, hear the application and enter such order in respect thereof as the court shall deem proper. If the proceeding be brought by some other person interested in the estate, citation shall issue, as required by law, to the trustee, unless such citation be expressly waived in writing. Any bond made pursuant to the provisions of this Subsection L shall be subject to increase, decrease, or the substitution or addition of another surety or other sureties upon order of the District Court in an action brought by any person interested in the trust estate, as in Section 24 hereof

provided. Any bond made pursuant to the terms of this Subsection shall be deposited with the Clerk of the District Court in which the order shall have been entered, and suit may be maintained on a certified copy thereof, provided that any recovery thereon shall, upon appropriate proof by the surety or sureties, reduce their liability on such bond pro tanto. Failure to comply with the provisions of this paragraph shall not render void or voidable, or otherwise affect, any act or transaction of the trustee with any third person.

Provided, however, that this Subsection shall not apply to corporate trustees which are authorized by law to act as trustee of any trust affected by this Act.

M. In the event that any property which is or may become a part of the assets of a trust is situated in a state or states other than the State of Texas, or in a foreign country, the Texas trustee is empowered to name an individual or corporate trustee qualified to act in any such state or foreign country in connection with the property situated therein as ancillary trustee of such property and require such security as may be designated by the Texas trustee. The ancillary trustee so appointed shall have all rights, powers, discretions, responsibilities and duties as are delegated to it by the Texas trustee, within the limits of the authority possessed by the Texas trustee, but shall exercise and discharge same subject to such limitations or directions of the Texas trustee as shall be specified in the instrument evidencing the appointment. The ancillary trustee shall be answerable to the Texas trustee for all monies, assets or other property entrusted to it or received by it in connection with the administration of the trust. The Texas trustee may remove such ancillary trustee and may or may not appoint a successor at any time or from time to time as to any or all of the assets. Provided, however, that if the ancillary trustee is to be appointed in any jurisdiction that requires any kind of procedure or judicial order for the appointment of such an ancillary trustee or to authorize it to act, the Texas trustee and the ancillary trustee must conform to all such requirements.

N. Whenever an instrument containing a trust reserves unto the trustor, or vests in an advisory or investment committee, or in any other person or persons (including a co-trustee), to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of investments, or of any investment, or the performance of any other act in the management and administration of the trust, the excluded trustee or co-trustee shall not be liable as trustee or co-trustee for any loss resulting from the making or retention of any investment

pursuant to such authorized direction, or from the doing of any act in the management and administration of the trust in accordance with such authorized direction. This Subsection shall not be applicable if the terms of the trust instrument contain contrary provisions with respect to the liability of the excluded trustee or co-trustee.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 25; Acts 1945, 49th Leg., p. 109, ch. 77, §§ 6 to 8; Acts 1961, 57th Leg., p. 44, § 3; Acts 1965, 59th Leg., p. 556, ch. 280, § 1, eff. May 29, 1965; Acts 1965, 59th Leg., p. 557, ch. 281, § 1, eff. May 29, 1965.]

#### Art. 7425b-26. Right of Trustee to Determine Principal and Income

This Act shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen in all cases where an express trust has been created; except that in the establishment of the principal, provision may be made touching all matters covered by this Act, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 26; Acts 1945, 49th Leg., p. 109, ch. 77, § 9.]

#### Art. 7425b-27. Income and Principal—Disposition

Unless otherwise expressly provided in this Act:

A. All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends payable other than in shares of the corporation, company, or association itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income.

B. All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, or for the granting of an option for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remaindermen are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal shall be deemed principal unless otherwise expressly provided in this Act. Any profit or loss resulting upon any change in form

of principal shall enure to or fall upon principal.

C. All income after deduction of expenses properly chargeable to it, including reasonable reserves, shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 27.]

#### Art. 7425b-28. Apportionment of Income

Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends, and such rights shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such net income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise, when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 28.]

#### Art. 7425b-29. Corporate Distributions

(a) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their ownership and the proceeds of any sale of the right are principal.

(b) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee be-

came a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to

(1) a call of shares;

(2) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(3) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(c) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(d) Except as provided in Subsections (a), (b), and (c), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in Subsections (b) and (c), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(e) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this Article concerning the source or character of dividends or distributions of corporate assets.

(f) This Act shall be applicable only to trusts created after the effective date of the Texas Trust Act, and shall not be construed to have any effect on trusts created prior to the effective date of the Texas Trust Act, Acts 1943, 48th Legislature, Page 232, Chapter 148. No provision of this Act shall be construed to alter the intent of any testator or testatrix as expressed in any testamentary instrument whether executed before or after the effective date of such Texas Trust Act and this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 29; Acts 1971, 62nd Leg., p. 2914, ch. 965, § 1, eff. June 15, 1971.]

#### Art. 7425b-30. Premium and Discount Bonds

Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was es-

tablished; or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or enure to principal; except securities purchased on a discount basis and not bearing interest, in which cases the discount when received, or recovered shall be income.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 30.]

#### Art. 7425b-31. Principal Used in Business

When principal is used in business, the net profits and any increase or decrease in the principal shall be allocated as follows:

A. Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

B. Where such business consists of buying and selling property—including the buying and selling of goods, wares and merchandise in operating and conducting a retail or wholesale business—the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses and purchases during the period and the inventory value of the property at the beginning of such period.

C. Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

D. Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, or fiscal year if it differs from calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 31.]

#### Art. 7425b-32. Principal Comprising Animals

Where any part of the principal consists of animals employed in business, the provision of Section 31 of this Act shall apply, and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 32.]

**Art. 7425b-33. Disposition of Natural Resources**

Where any part of the principal consists of any interest in lands, including royalties, overriding royalties, and working interest, from which may be taken timber, minerals, oil, gas or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal or trust was established to sell, lease, or otherwise develop such natural resources, and no provision is made for the disposition of the proceeds thereof, such proceeds, if received as delay rentals on a lease shall be deemed income, but if received as consideration, whether as bonus or consideration for the execution of the lease or as royalties, overriding or limited royalties, oil payments or other similar payments, received in connection with the physical severance of such natural resources, shall be apportioned to principal and income as follows: 27½% of the gross proceeds (but not to exceed 50% of the net, after deducting the expense and carrying charges on such property) shall be treated as principal and invested or held for the use and benefit of the remainderman, and the balance shall be treated as income subject to be disbursed to the tenant or person entitled thereto. Such disposition of proceeds shall apply whether the property is producing or non-producing at the time the trust becomes effective.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 33; Acts 1945, 49th Leg., p. 109, ch. 77, § 10.]

**Art. 7425b-34. Principal Subject to Depletion**

Where any part of the principal in the possession or under the custody and control of the trustee consists of property other than natural resources, subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five (5%) per cent per annum of its fair inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 34.]

**Art. 7425b-35. Unproductive Estate**

Upon conversion of any unproductive property, allocation between principal and income shall be as follows:

A. Where any part of a principal in the possession of a trustee consists of realty or personalty, whether tangible or intangible property, which for more than a year

and until disposed of as hereinafter stated has not produced an average net income, not considering depreciation or obsolescence, of at least one (1%) per cent per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death, his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated. The basis under this Section for establishing value of property acquired through foreclosure of a mortgage held by the trust, shall be the net investment in the property up to the date of re-sale by the trust and not the price bid at the foreclosure sale. Net investment shall consist of all moneys invested and advanced.

B. Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of four (4%) per cent per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property, or in default thereof, its market value at the time the principal was established or its costs where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which are chargeable to principal during the period while it has been unproductive. No allocation to income shall be made when the net proceeds from any sale are less than the value of the property as determined by sub-section A of this section.

C. The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

D. If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

E. In case of successive tenants the delayed income shall be divided among them or their representatives according to the

length of the period for which each was entitled to income.

F. Where a trustee is required to change the form of investment under the provisions of the instrument by which the trust is created or under the existing law, he shall use reasonable care in determining the necessity for such change and the time and manner of changing said form of investment. Provided, that the provisions in this Section shall not be construed to require a trustee to change the form of an investment.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 35; Acts 1945, 49th Leg., p. 109, ch. 77, § 11.]

#### Art. 7425b-36. Expenses—Trust Estate

A. All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, compensation of assistants, fees, and court costs on regular accountings, shall be chargeable against income; provided, however, that the trustee's compensation or commissions, as defined in Subsection K of Section 4 of this Act, and attorney's fees may be chargeable against income or principal or partially against income and partially against principal as the trustee shall determine in its discretion to be just and equitable.

B. All other expenses, including cost of investing or reinvesting principal, attorney's fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of Subsection B of Section 27 of this Act, shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

C. Expenses paid out of income according to Subsection A of this Section which represents regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of the income are of unusual amount the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expense shall be apportioned between tenant and remainderman on the basis of such distribution.

D. Where the costs of, or special taxes or assessments for, an improvement representing

an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in Subsection B, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 36; Acts 1965, 59th Leg., p. 559, ch. 283, § 1, eff. May 31, 1965.]

#### Art. 7425b-37. Death of Trustee; Duty of Court

Upon the death of a sole or surviving trustee of an express trust and in the absence of the trust instrument providing for the appointment of a successor trustee, the power to appoint a trustee shall vest in the court having jurisdiction thereof, and on petition of any person interested in the trust estate such court shall appoint a successor in whom the trust shall vest.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 37.]

#### Art. 7425b-38. Resignation of Trustee

Upon petition of any trustee of an express trust, a court having jurisdiction may accept his resignation, and discharge him from the trust upon such terms and conditions as the rights of the person interested in the trust may require.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 38.]

#### Art. 7425b-39. Removal of Trustee

Trustees having materially violated (or attempted to violate) any express trust resulting in an actual financial loss to the trust, or becoming incompetent or insolvent, or of whose solvency or that of the sureties there is reasonable doubt, or for other cause, in the discretion of the court having jurisdiction, may, on petition of any person actually interested, after hearing, be removed by such court and denied compensation in whole or in part; and any beneficiary, co-trustee, or successor may treat the violation as a breach of trust; and all vacancies in express trusteeships may be filled by such court.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 39.]

#### Art. 7425b-40. Power and Duties of Successor Trustees

Trustees appointed by the District Courts of Texas shall be vested with all the rights, powers, and other authority, trusts, privileges, discretion and title to properties conferred upon the trustee by the trust instrument, and by statute, unless otherwise provided by the court in the order of appointment; and shall be charged with all the duties, responsibilities and liabilities imposed by the trust instrument and by statute.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 40.]

#### Art. 7425b-41. Revocable Unless Expressly Made Irrevocable

Every trust shall be revocable by the trustor during his lifetime, unless expressly made irrevocable by the terms of the instrument creating

the same or by a supplement or amendment thereto.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 41.]

**Art. 7425b-42. Grantor May Direct Disposition on Failure of Trust**

Notwithstanding anything contained in Section 41 of this Act, the trustor of a trust may, in its creation, prescribe to whom the real or personal property to which the trust relates shall belong, in the event of the failure, termination, revocation or cancellation of the trust, and may transfer or devise such property, subject to the execution of the trust.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 42; Acts 1945, 49th Leg., p. 109, ch. 77, § 12.]

**Art. 7425b-43. Legal Estate in Grantee Subject to Trust**

The grantee or devisee of real or personal property that is subject to a trust acquires a legal estate in the property, against all persons except the trustees and those lawfully claiming under them.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 43.]

**Art. 7425b-44. Status of Estate Not Disposed of**

Where an express trust is created in relation to real or personal property, every estate not embraced in the trust, and not otherwise disposed of, is left in the trustor of the trust or his legal successors in title.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 44.]

**Art. 7425b-45. Re-instating Common Law**

The repeal of any section of the statutory law of this state by this Act, which repealed section abrogated or re-stated the common-law rule, shall operate to re-instate and re-establish the common-law rule applicable thereto, except as the subject matter thereof may be changed by the provisions of this Act.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 45.]

**Art. 7425b-46. Investment Powers of Trustee**

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising and managing property for the benefit of another, the trustee shall exercise the judgment and care under the circumstances then prevailing, which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, and interests in investment trusts and mutual funds, which men of ordinary prudence, discretion, and intelligence acquire or retain for their own account; and within the limita-

tions of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

B. Nothing contained in this Section of this Act shall be construed as authorizing any departure from, or variation of, the express terms, provisions or limitations set forth in any will, agreement, court order or other instrument creating or defining the trustee's duties, authority and powers, but the terms "legal investment" or "authorized investment", or words of similar import, as used in any such trust instrument, shall be taken to mean any investment which is permitted by the terms of paragraph A hereof.

C. Nothing contained in this Section of this Act shall be construed as restricting the power of a court of competent jurisdiction to permit and authorize the trustee to deviate and vary from the terms of any will, agreement, or other trust instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, supervision or management of trust property.

D. The provisions of this Section of this Act shall govern the trustee acting under wills, agreements, court orders and other trust instruments now existing or hereafter made.

E. The provisions of this Section of this Act shall be cumulative of all other provisions of the Civil Statutes of the State of Texas affecting the investment of funds or monies by a trustee.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 46; Acts 1945, 49th Leg., p. 109, ch. 77, § 13; Acts 1969, 61st Leg., p. 2016, ch. 689, § 1, eff. Sept. 1, 1969.]

**Art. 7425b-47. Constitutionality**

It is hereby declared to be the legislative intent to enact a separate provision of this Act independent of all other provisions, and the fact that any phrases, sentences, clauses or sections of this Act shall be declared unconstitutional shall in no event affect the validity of any of the other provisions hereof.

[Acts 1943, 48th Leg., p. 232, ch. 148, § 47.]

**UNIFORM COMMON TRUST FUND ACT**

**Art. 7425b-48. Uniform Common Trust Fund Act**

Sec. 1. Any bank or trust company qualified to act as fiduciary in this State may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment.

Sec. 2. Unless ordered by a Court of competent jurisdiction the bank or trust company

operating such common trust funds is not required to render a Court accounting with regard to such funds; but it may, by application to the District Court, secure approval of such an accounting on such conditions as the Court may establish.

Sec. 3. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

Sec. 4. This Act may be cited as the "Uniform Common Trust Fund Act."

Sec. 5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 6. All laws or parts of laws which are inconsistent with the provisions of this Act are hereby repealed.

[Acts 1947, 50th Leg., p. 371, ch. 209.]

**Art. 7425b-48a. Incorporation of Uniform Common Trust Fund Act as Part of Texas Trust Act**

That the "Uniform Common Trust Fund Act," codified as Article 7425b-48 V.A.T.S. (Chapter 209, Acts of the 50th Legislature, page 371), shall be considered as, and is hereby made a part of, the "Texas Trust Act," codified as Article 7425b-1 through 7425b-47 (Chapter 148, Acts of the 48th Legislature, page 232, as amended), for all purposes.

[Acts 1969, 61st Leg., p. 2017, ch. 690, eff. Sept. 1, 1969.]

**POWERS**

**Art. 7425c. Release of Powers of Appointment**

**Definitions**

Sec. 1. When used in this Act, unless the context otherwise requires:

(a) "Power" means any power to appoint or designate to whom property shall go, any power to invade or consume property, any power to alter, amend or revoke any instrument under which an estate or trust is held or created or to terminate any right or interest thereunder, and any power remaining where one or more partial releases have heretofore or hereafter been made with respect to a power, whether heretofore or hereafter created or reserved, whether vested, contingent or conditional, and whether classified in law or known as a power in gross, a power appendant, a power appurtenant, a collateral power, a general, special or limited power, an exclusive or non-exclusive power, or otherwise, and irrespective of when or in what manner a power, as herein defined, was created or reserved, or when, in what

manner, or in whose favor, it may be exercised; provided, however, that the word "power" shall not include a power in trust which is imperative, and this Act shall not apply thereto.

(b) "Donee" means any person, whether resident or non-resident of this State, who, either alone or with another or others, has the right to exercise a power.

(c) "Objects", when used in connection with a power, means the persons in whose favor the power may be exercised.

(d) "Property", when used in connection with a power, means any and all property, whether real or personal, any and all interest in property, and any and all income from property, which is subject to the power, and includes any part of the property, any part of the interest in property, and any part of the income from property.

(e) "Release" means renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release. "Release" shall likewise include a covenant not to exercise a power, either in whole or in part.

**Donee May Release Power**

Sec. 2. Unless the instrument creating the power specifically provides to the contrary, the donee of a power may:

(A) At any time completely release his power;

(B) At any time or times release his power

(a) as to any property which is subject thereto;

(b) as to any one or more of the objects thereof; or

(c) so as to limit in any other respect the extent to which it may be exercised.

**Requisites of Release; Delivery**

Sec. 3. A release of a power, whether partial or complete, shall be valid and effective, with or without a consideration, when the donee thereof executes and acknowledges, in the manner required by law for execution and recordation of deeds, an instrument evidencing an intent to make the release, and delivers the instrument or causes it to be delivered, either:

(A) To any person or in any manner specified for such purpose in the instrument creating the power; or

(B) To any adult person, other than the donee so releasing, who may take any of the property which is subject to the power in the event of its non-exercise or to one in whose favor it may be exercised after such partial release; or

(C) To any trustee or any co-trustee of the property which is subject to the power; or

(D) By filing the same with the County Clerk for recordation in the Deed Records of any county in the State of Texas in which any property subject to such power is situated, or in which the donee, if in control of the property resides, or in which the trustee in control of the property resides, or in which a corporate trustee in control of the property has its principal office, or in which the instrument creating the power is probated or recorded.

#### Powers Exercisable by Two or More Donees

Sec. 4. If a power is or may be exercisable by two or more donees, either in an individual or fiduciary capacity in conjunction with one another or successively, a release thereof in whole or in part by any one or more of the donees shall not, unless the instrument creating the power otherwise provides, prevent or limit the exercise or participation in the exercise thereof by the other donee or donees.

#### Notice of Release

Sec. 5. (A) No fiduciary or other person, association or corporation having the possession or control of any property subject to a power (other than the donee thereof) shall be deemed to have notice of a release of the power unless and until the original or a copy of the release is delivered to such fiduciary or other person, association or corporation.

(B) No purchaser, lessee or mortgagee, for a valuable consideration, of real property subject to a power who is without actual notice shall be deemed to have notice of a release of the power unless and until the instrument effecting such release, or a proper copy thereof, is filed with the County Clerk of the county in which the particular real property so purchased, leased, or mortgaged is situated, for recordation in the Deed Records of such county.

#### Recording and Indexing

Sec. 6. County Clerks are authorized and directed to record releases in the Deed Records of their respective counties, and to index the same, the name of the donee being entered in the grantor index, and to charge therefor at the rate applicable to deeds.

#### Failure to Deliver or File

Sec. 7. Failure to deliver or file an instrument releasing a power, or a copy of such instrument, as provided in Sections 4 and 5 of this Act, shall not affect the validity of the release as to the donee or objects thereof or as to any other persons except those expressly protected by the provisions of said sections.

#### Release by Guardian

Sec. 8. A power held by a person under a disability and for whose estate a guardian has been or may be appointed, may be released, in the manner hereinabove provided, by the guardian of such person's estate, upon order of the County Court of the county in the State of Texas in which such guardian shall have been

appointed or in which the guardianship proceeding shall be pending.

#### Power Held by Married Woman

Sec. 9. A power held by a married woman may be released by her, in the manner hereinabove provided, without the joinder of her husband, unless his joinder would be required in the exercise of such power, in which event his joinder shall be required.

#### Restraints of Alienation or Anticipation

Sec. 10. Release of a power otherwise releasable shall not be prevented merely by provisions in restraint of alienation or anticipation contained in the instrument creating the power.

#### Rights and Means Not Exclusive

Sec. 11. The rights and means provided for in this Act for the release of a power are not exclusive, but are in addition to all other rights and means of a donee to release a power in whole or in part.

#### Releases Prior to Enactment of Law

Sec. 12. Nothing in this Act shall invalidate any valid release made prior to the enactment hereof, and all releases made prior to such enactment, which are not valid under law then existing but which are in substantial compliance with the requirements hereof, are hereby validated, unless the power intended to be affected by such an invalid release was thereafter, but prior to the enactment hereof, exercised.

#### Declaratory of Common Law; Liberal Construction; Applicability

Sec. 13. This Act shall, so far as possible, be deemed to be declaratory of the common law of the State of Texas and shall be liberally construed so as to effectuate the intent that all powers whatsoever, except powers in trust which are imperative, shall be releasable unless otherwise expressly provided in the instrument creating the power.

#### Conflict With Other Laws

Sec. 14. Insofar as the provisions of this Act may conflict with other Acts or parts thereof, the provisions of this Act shall control.

#### Partial Invalidity

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

[Acts 1951, 52nd Leg., p. 316, ch. 193.]

### PENSION TRUSTS

#### Art. 7425d. Pension Trusts

Definition of Pension Trust; Existence of Employer-Employee Relationship

Sec. 1. For the purposes of this Act the term "Pension Trust" means an express Trust

heretofore or hereafter created in relation to or consisting of real, personal or mixed property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan or profit sharing plan for the benefit of some or all of the employees of such employer, to which contributions are made by such employer, by some or all of such employees, or both, for the principal purpose of distributing to such employees, or to the successors to their beneficial interest in such Trust, the earnings or the principal or both earnings and principal of the fund so held in Trust. For the purposes of this definition, the relationship of employer and employee shall be deemed to exist between a corporation, its own employees and the employees of each other corporation which it controls, by which it is controlled or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

#### Texas Trust Act; Applicability

Sec. 2. A Pension Trust shall be a Trust within the meaning of Section 2 of the Texas Trust Act.<sup>1</sup>

#### Rule Against Perpetuities

Sec. 3. A Pension Trust shall not be deemed to be invalid as violating the so-called Rule Against Perpetuities, any other law against perpetuities or any law restricting or limiting the duration of Trusts and any Pension Trust may continue for such time as may be necessary to accomplish the purposes for which it was created.

#### Accumulation of Income

Sec. 4. The income arising from any Pension Trust may be accumulated in accordance with the terms of such Trust for so long a time as may be necessary to accomplish the purposes for which the same was created, notwithstanding any law or laws limiting the period during which Trust income may be accumulated.

#### Application of Act

Sec. 5. The provisions of this Act shall apply to Pension Trusts created under the laws of this State and to Pension Trusts wherever created in so far as the laws of this State are applied to them.

[Acts 1955, 54th Leg., p. 1606, ch. 521.]

<sup>1</sup> Article 7425b-2.

### CHARITABLE TRUSTS

#### Art. 7425e. Amendment of Charitable Trusts

##### Amendment by Operation of Law

Sec. 1. Notwithstanding any provision in the laws of this State (including, but not limited to, Title 125A, Vernon's Texas Civil Statutes)<sup>1</sup> or in the governing instrument to the contrary (except as provided in Section 2 of this Act), the governing instrument of each trust which is a private foundation described

in Section 509 of the Internal Revenue Code of 1954<sup>2</sup> (including each nonexempt charitable trust described in Section 4947(a)(1) of the Code<sup>3</sup> which is treated as a private foundation) and the governing instrument of each nonexempt split-interest trust described in Section 4947(a)(2) of the Code<sup>4</sup> (but only to the extent that Section 508(e) of the Code<sup>5</sup> is applicable to such nonexempt split-interest trust under Section 4947(a)(2) of the Code) shall be deemed to contain the following provisions: "The trust shall make distributions at such time and in such manner as not to subject the trust to tax under Section 4942 of the Internal Revenue Code of 1954;<sup>6</sup> the trust shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code;<sup>7</sup> the trust shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code;<sup>8</sup> the trust shall not make any investments which would subject it to tax under Section 4944 of the Code;<sup>9</sup> and the trust shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code."<sup>10</sup> With respect to any such trust created prior to January 1, 1970, this Section 1 shall apply only for its taxable years beginning on or after January 1, 1972.

#### Election to Avoid Amendment by Law

Sec. 2. The trustee of any trust described in Section 1 of this Act (with the consent of the trustor, if then living and competent to give consent) may, without judicial proceedings, amend such trust to expressly exclude the application of Section 1 of this Act by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Texas, and upon filing of such amendment, Section 1 of this Act shall not apply to such trust.

#### Permissive Amendment by Trustee

Sec. 3. The trustee of any trust described in Section 1 of this Act (with the consent of the trustor, if then living and competent to give consent) may, without judicial proceedings, amend the governing instrument to expressly include the provisions required by Section 508(e) of the Code by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Texas.

#### Definitions

Sec. 4. A. The definitions of "trust," "trustee" and "trustor" contained in the Texas Trust Act shall apply to such terms as used in this Act; provided that "trust" shall include any trust, regardless of when created.

B. All references in this Act to "the Code" are to the Internal Revenue Code of 1954, and all references in this Act to specific sections of the Code include corresponding provisions of any subsequent Federal tax laws.

## Severability

Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes,

powers, rights, functions and authorities herein set forth.

[Acts 1971, 62nd Leg., p. 886, ch. 117, eff. May 10, 1971.]

- 1 Article 7425a et seq.
- 2 26 U.S.C.A. § 509.
- 3 26 U.S.C.A. § 4947(a)(1).
- 4 26 U.S.C.A. § 4947(a)(2).
- 5 26 U.S.C.A. § 508(e).
- 6 26 U.S.C.A. § 4942.
- 7 26 U.S.C.A. § 4941.
- 8 26 U.S.C.A. § 4943.
- 9 26 U.S.C.A. § 4944.
- 10 26 U.S.C.A. § 4945.

## TITLE 126

**TRUSTS—CONSPIRACIES AGAINST TRADE**  
**[Repealed]**

Arts. 7426 to 7447. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce*

*Code, repealed articles 7426 to 7447 effective September 1, 1967.*

*See, now, Business and Commerce Code, § 15.01 et seq.*

## TITLE 127

# VETERINARY MEDICINE AND SURGERY

### Article

7448 to 7465. Repealed.

7465a. Veterinary Licensing Act.

7465b. Texas Veterinary Medical Diagnostic Laboratory.

**Arts. 7448 to 7465. Repealed by Acts 1953, 53rd Leg., p. 844, ch. 342, § 22**

### Art. 7465a. Veterinary Licensing Act

#### Short Title

Sec. 1. This Act may be cited as "The Veterinary Licensing Act."

#### Definitions

Sec. 2. (a) As used in this Act, except where the context otherwise requires, "Veterinarian" means any person who is licensed to practice Veterinary Medicine by the Texas State Board of Veterinary Medical Examiners.

(b) Any person shall be deemed in the "Practice of Veterinary Medicine" who represents himself as engaged in the practice of veterinary medicine; or uses any words, letters or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, or any person who performs a surgical or dental operation or who diagnoses, treats, immunizes or prescribes any drug, medicine, application or veterinary appliance for any physical ailment, injury, deformity or condition of domestic animals, for compensation.

(c) "Board" means the State Board of Veterinary Medical Examiners.

(d) "Licensee" means any person holding a license to practice veterinary medicine issued by the Board.

(e) "Applicant" means any person requesting that the Board examine his qualifications for the practice of veterinary medicine or requesting the issuance or renewal of a license.

(f) "License" means license to practice veterinary medicine.

#### Exceptions to Application of Law

Sec. 3. The provisions of this Act shall not apply nor shall the following be construed as the practice of veterinary medicine:

(1) Treatment or caring for animals in any manner personally by the owner thereof, or by any employee of the owner thereof.

(2) Performance of the operation of male castration on domestic animals, or docking or earmarking of domestic animals.

(3) Performance of the operation of dehorning cattle, or the spaying of large ani-

mals, or operation in aid of the birth process in large animals.

(4) Drenching and spraying of domestic animals for internal or external parasites, or vaccination for black-leg, shipping fever, or sore mouth.

(5) Recommendation by a retail distributor of a medicine, remedy or insecticide which is adequately labeled and has been duly registered with the Texas State Department of Health as required by the Texas Livestock Remedy Act when the retail distributor is advised by the customer of the type of ailment which he wishes to treat.

(6) Treatment and caring for poultry and rabbits.

(7) Branding animals in any manner.

#### Necessity of License

Sec. 4. No person shall practice, offer or attempt to practice veterinary medicine in this State without first having obtained a valid license to do so from the Texas Board of Veterinary Medical Examiners.

#### State Board of Veterinary Medical Examiners

Sec. 5. (a) The Board consists of six members appointed by the Governor for six-year terms.

(b) To be eligible for appointment to the Board, a person must

(1) have resided in the state and practiced veterinary medicine for the six years next preceding his appointment;

(2) be of good repute; and

(3) not be a member of the faculty of any veterinary medical college or of the veterinary medical department of any college or have a financial interest in a veterinary medical college.

(c) A person appointed to the Board qualifies for office by taking the constitutional oath of office. After taking the oath, he shall file a signed copy of it with the Secretary of State.

(d) The Governor shall fill by appointment vacancies on the Board resulting from death or resignation of a member. The person appointed to fill a vacancy serves for the unexpired portion of the vacated term.

(e) At its first meeting each year the Board shall elect from its number a president and any other officers it considers necessary or convenient. Four members of the Board constitute a quorum for the transaction of Board business.

(f) Each Board member is entitled to compensation in the amount of \$25 a day for each

day he is engaged in the duties of his office. Each member is also entitled to be reimbursed for his actual, necessary expenses incurred while performing the duties of his office.

#### Executive Secretary and Other Personnel

Sec. 6. The Board may employ an executive secretary and such other persons as it deems advisable to carry out the purposes of this Act, and shall require the executive secretary, charged with the safekeeping of the moneys and proper disbursement of the veterinary fund provided for in this Act, to file with the Board a surety bond in an amount not less than Five Thousand Dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

#### Rules and Regulations

Sec. 7. The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

#### Rules of Professional Conduct

Sec. 8. The Board may from time to time adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine. Provided, however, that all such rules and regulations shall not be effective until they are approved by the Attorney General of this state and filed with the Secretary of the State of Texas.

#### Issuance and Renewal of Licenses; Record of Registrants

Sec. 9. The Board shall issue and renew licenses for the practice of veterinary medicine as provided for in this Act, and shall keep a record in which shall be registered the name and residence or place of business of all persons licensed to practice veterinary medicine in this State.

#### Qualifications for License

Sec. 10. The following persons are qualified to be licensed veterinarians:

(a) Any person not previously licensed in this State is qualified to be licensed, provided:

- (1) He is of good moral character;
- (2) he is a citizen of the United States;
- (3) he is at least twenty-one (21) years of age;<sup>1</sup>
- (4) he is a graduate of a reputable school or college of veterinary medicine as approved by the Board;
- (5) he successfully completes the examination conducted by the Board;
- (6) the Board does not refuse issuance of the license as provided in Section 14 (Refusing Examination, License or Renewal).

<sup>1</sup> West's Tex. Stats. & Codes—64

(b) Any person licensed to practice veterinary medicine by authorities other than those in Texas, provided such license is in full force and effect, may in each instance apply for a license, and, in the discretion of the Board, be licensed under the terms of reciprocity agreements. The Board may arrange for reciprocity in license with the proper authorities of other states and territories of the United States having requirements substantially equal to those established by subsection (a) of this Section.

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

#### Previously Issued Licenses

Sec. 11. Any person in Texas holding a previously issued license which is still in effect on the effective date of this Act, shall be deemed licensed under this Act, entitled to practice veterinary medicine, and subject to the provisions of this Act applicable to licensees.

#### Meetings and Examinations

Sec. 12. The Board shall hold regular meetings at least twice each year for the holding of examinations as provided in this Act, at such times and places as it deems convenient for applicants for examinations. Notice of meetings for holding examinations shall be given by publication in such newspapers or periodicals as the Board may select, and the Board shall examine all qualified applications for examinations as follows:

(a) Examinations shall be on subjects and operations pertaining to veterinary medicine including veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, sanitary science, veterinary practice, veterinary jurisprudence, veterinary physiology and bacteriology and such other subjects as are regularly taught in reputable schools of veterinary medicine.

(b) Examinations may be given orally, in writing, or a practical demonstration of the applicant's skill, or any combination of these as the Board may determine.

(c) Applicants shall demonstrate such standard of proficiency as the Board may determine is essential for a qualified veterinarian.

#### Expiration and Renewal of Licenses

Sec. 13. Licenses shall expire March 1st of each calendar year, and any licensee may renew his license on or before March 1st by making written application to the Board setting forth such facts as the Board may require, and by paying the required fee. Any person whose license expires, or has expired prior to the effective date of this Act, may, in the discretion of the Board, renew his license by making written application to the Board setting forth such facts as the Board may require, and by payment of annual renewal fees in arrears and an additional fee of Five Dollars (\$5.00); provided, however, that the requirements governing the payment of the annual renewal fee and

the penalty for late renewal shall not apply to licensees who are on active duty with the Armed Forces of the United States of America and who do not engage in private or civilian practice; provided further, licensees who are full-time members of the faculty of a reputable veterinary college or school in the State of Texas where such faculty members perform their services for the sole benefit of such school or college and who do not engage in private or civilian practice shall pay one-half ( $\frac{1}{2}$ ) of the annual renewal fee fixed by the Board pursuant to law.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 13A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on March 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

#### Revocation or Suspension of License; Refusal to Examine Applicant or Issue or Renew License; Grounds

Sec. 14. The Board may revoke or suspend any license, may refuse to examine an applicant, to issue a license or to issue a renewal of a license, after notice and hearing as provided in Section 15 of this Act, or as provided by the rules of the Board, if it finds that an applicant or licensee:

(a) Has presented to the Board dishonest or fraudulent evidence of qualification; has been guilty of illegal fraud or deception in the process of examination, or for the purpose of securing a license; or

(b) Is chronically or habitually intoxicated or is addicted to drugs; or

(c) Has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or

(d) Has been convicted of a felony under the laws of this or any other state of the United States or of the United States; or

(e) Has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law; or

(f) Has permitted or allowed another to use his license, or certificate to practice veterinary medicine in this state, for the purpose of treating, or offering to treat, sick, injured or afflicted animals."

#### Procedure for Revocation or Suspension of License

Sec. 15. Proceedings by the Board for the suspension or revocation of a license to practice veterinary medicine shall be as follows:

(a) Proceedings may be instituted by any member of the Board or its employees or by any other person, by filing with the Board a sworn statement setting forth the grounds upon which the person presenting the statement believes the Board should revoke or suspend the license.

(b) Upon the filing of such statement the executive secretary shall cause such investigation to be made as he deems necessary to determine the existence of such grounds, and if the executive secretary is of the opinion that grounds for suspension or revocation of a license exist, he shall cause appropriate entries to be made on a hearing docket and shall fix a time and place for hearing as may be prescribed by the rules of the Board.

(c) The executive secretary shall cause notice of the hearing to be given the licensee, whose license is under consideration for suspension or revocation, not less than ten (10) days prior to the date fixed for hearing. Notice of hearing shall be served as is provided by law in civil cases in the District Courts of this State, and shall contain a brief statement of the statutory grounds upon which revocation or suspension of license is being considered; the date, time and place of hearing; and a statement that the licensee may appear and offer such evidence as is pertinent to the question of revocation or suspension of license.

(d) The Board shall conduct hearings under such rules as the Board may adopt, and may administer oaths and subpoena and compel attendance of witnesses, deemed by the Board or the licensee to have knowledge which would aid the Board in reaching a proper decision and for enforcement of this Act, in the same manner as the District Courts of this State in civil proceedings.

(e) The Board may, by a three-fourths vote of the members of the Board present, evidenced by the signatures of such members on the order, reprimand a licensee or order an accused licensee's license suspended for such time as the Board may determine, or order his license revoked.

#### Appeals

Sec. 16. a. Within 30 days after issuance of an order by the Board suspending, revoking, or refusing to renew a license, the affected licensee or applicant may appeal such order to the district court of the county in which the applicant or licensee maintained his principal office for the practice of veterinary medicine on the dates of the commission of the acts relied upon by the Board to suspend or revoke a

license or refuse to issue a renewal of a license. An applicant who has never practiced veterinary medicine may, within 30 days after issuance of an order by the Board refusing to examine the qualifications of the applicant or refusing to issue a license to the applicant, appeal the Board's order to the district court of the county in which the applicant resided at the time he made such application to the Board.

b. The trial in the district court shall be de novo as in cases of appeal from the justice courts to the county courts of the State of Texas. Either party may demand a jury to pass upon the disputed fact issues. The district court upon final hearing shall enter its judgment suspending or revoking the license or refusing to suspend or revoke the license as the court may determine. The Board or the applicant or licensee may appeal as in other civil cases.

#### Injunction Proceedings; Venue

Sec. 17. The Attorney General or any District or County Attorney may institute any injunction proceeding or any such other proceeding incident to such injunction proceeding as to enforce the provisions of this Act and to enjoin any person from the practice of veterinary medicine, as defined in this Act, without such person having complied with the other provisions of this Act. The venue for such injunction proceedings shall be in the county of the residence of the person against whom such injunction proceedings are instituted.

#### Penalties

Sec. 18. (a) Any member or employee of the Board who issues a license other than as provided in this Act, or who gives an applicant for examination a list of questions to be propounded at the examination, shall be fined not less than Two Hundred Dollars (\$200), nor more than One Thousand Dollars (\$1,000).

(b) Any person who practices, offers or attempts to practice veterinary medicine in this State without first having complied with the provisions of this Act shall be fined not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200). Each day of practicing, attempting or offering to practice is a separate offense.

#### Fees

Sec. 19. Applicants for examinations shall pay to the Board a fee of Fifty Dollars (\$50), and an applicant for license under the reciprocal provisions of this Act shall pay to the Board a fee of One Hundred Dollars (\$100) at the time of application to the Board for such license. Licensees shall pay to the Board for annual renewal of licenses, a fee of not less

than Five Dollars (\$5), nor more than Thirty Dollars (\$30), as determined by the Board, based upon the needs of the Board, and a licensee whose license has been lost or destroyed shall be issued a duplicate license after application and upon payment of a fee of Twenty Dollars (\$20).

#### Veterinary Fund

Sec. 20. All fees collected by the Board under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Veterinary Fund," and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of Forty Thousand Dollars (\$40,000) remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

#### Payment of Compensation, Expenses and Costs

Sec. 21. The compensation and expenses of Board members, the salaries and expenses of employees, and all other costs of the Board in the administration of this Act shall be paid from the Veterinary Fund created by this Act, and no moneys for such purposes shall be paid from the General Fund of this State.

[Acts 1953, 53rd Leg., p. 844, ch. 342; Acts 1957, 55th Leg., p. 279, ch. 128, § 1; Acts 1959, 56th Leg., p. 833, ch. 373, §§ 1 to 4; Acts 1965, 59th Leg., p. 417, ch. 205, § 1; Acts 1967, 60th Leg., p. 1756, ch. 662, § 2, eff. June 17, 1967; Acts 1969, 61st Leg., p. 360, ch. 128, § 1, eff. May 6, 1969; Acts 1973, 63rd Leg., p. 629, ch. 266, § 28, eff. June 11, 1973.]

#### Art. 7465b. Texas Veterinary Medical Diagnostic Laboratory

Sec. 1. There is hereby created an agency of the State of Texas to be known as the Texas Veterinary Medical Diagnostic Laboratory. It shall not be a part or unit of any institution or system of higher education of the state but it shall be under the jurisdiction and supervision of the Board of Directors of Texas A&M University. The said Board of Directors shall staff the agency with an executive director and such other employees necessary for the proper functioning thereof.

Sec. 2. The Board of Directors of Texas A&M University shall make available to the State Building Commission state land in Brazos County for a site on which shall be constructed and equipped a building to house the facilities of the Texas Veterinary Medical Diagnostic Laboratory and an animal building for use related to the use of the laboratory building.

[Acts 1967, 60th Leg., p. 37, ch. 17, eff. Aug. 28, 1967.]

## TITLE 128

### WATER

*See, now, Water Code and Water Special  
Laws Table in Volume 1.*

## TITLE 129

### WILLS [Repealed]

Arts. 8281 to 8305. Repealed by Acts 1955,  
54th Leg., p. 88, ch. 55, § 434, eff. Jan. 1,  
1956

See, now, Probate Code, in Volume 2.

# TITLE 130

## WORKMEN'S COMPENSATION LAW

### PART 1.

#### Article

8306. Damages and Compensation for Personal Injuries.  
8306a. Discount for Present Payment.

### PART 2.

8307. Industrial Accident Board.  
8307a. Suit to Set Aside Decision of Industrial Accident Board; Transfer to County Where Injury Occurred.  
8307b. Presumptions on Appeal From Board; Denial by Verified Pleadings.  
8307c. Protection of Claimants From Discrimination by Employers; Remedies; Jurisdiction.

### PART 3.

8308. Employers' Insurance Association.

### PART 4.

8309. Definitions and General Provisions.  
8309a. Hearing of Claim by Industrial Accident Board; Postponement of Hearing.  
8309b. Texas A & M University Employees.  
8309c, 8309c-1. Repealed.  
8309d. University of Texas System Employees.  
8309e to 8309e-1. Repealed.  
8309f. Texas Tech University Employees.  
8309g. Workmen's Compensation Insurance for State Employees.  
8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions.

### PART 1.

#### Art. 8306. Damages and Compensation for Personal Injuries

##### Defenses

Sec. 1. In an action to recover damages for personal injuries sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was guilty of contributory negligence.
2. That the injury was caused by the negligence of a fellow employé.
3. That the employé had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employé to bring about the injury, or was so caused while the employé was in a state of intoxication.

4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment.

##### Application of Law; Exceptions

Sec. 2. The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants or casual employees engaged in employment incidental to a personal residence, farm laborers, ranch laborers, nor to the employees of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier.

##### Nonresidents; Employment of Labor; Service of Process on Chairman of Industrial Accident Board

Sec. 2a. The acceptance by a nonresident of this State of the rights, privileges and benefits extended by law to such persons of employing labor within the State of Texas shall be deemed equivalent to an appointment by such nonresident of the Chairman of the Industrial Accident Board of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident growing out of any accident resulting in the injury or death of any employee of said nonresident, occurring in the course of employment of the employee in this State, when the action or proceeding is brought by the employee, his heirs or legal representative. Service of process under this Section shall be in the same manner and method as that prescribed in Chapter 125, Acts of the Forty-first Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the Fifty-sixth Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the Chairman of the State Highway Commission.

##### Exclusiveness of Remedy; Exemption of Compensation From Legal Process; Assignability; Recovery From Third Persons; Liability of Subscriber

Sec. 3. The employees of a subscriber and the parents of minor employees shall have no right of action against their employer or against any agent, servant or employee of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employer or his agent, servant or employee for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for. All compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all

other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. If an action for damages on account of injury to or death of an employee of a subscriber is brought by such employee, or by the representatives or beneficiaries of such deceased employee, or by the association for the joint use and benefit of itself and such employee or such representatives or beneficiaries, against a person other than the subscriber, as provided in Section 6a, Article 8307, Revised Civil Statutes of Texas, 1925, and if such action results in a judgment against such other person, or results in a settlement by such other person, the subscriber, his agent, servant or employee, shall have no liability to reimburse or hold such other person harmless on such judgment or settlement, nor shall the subscriber, his agent, servant or employee, have any tort or contract liability for damages to such other person because of such judgment or settlement, in the absence of a written agreement expressly assuming such liability, executed by the subscriber prior to such injury or death. No part of this Section is intended to lessen or alter the employees existing rights or cause of action either against his employer, its subscriber, or any third party.

The Association, its agent, servant or employee, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the association for the prevention of accidents in connection with operations of its subscriber; provided, however, this immunity shall not affect the liability of the association for compensation or as otherwise provided in this law. No part of this Section is intended to lessen or alter the employees existing rights or cause of action either against his employer, its subscriber, or any third party.

#### Waiver of Common Law or Statutory Right of Action

Sec. 3a. An employé of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within five days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employé of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above pro-

vided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State.

#### Compensation, When to be Paid

Sec. 3b. If an employé who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury.

#### Notice of Provision for Compensation

Sec. 3c. From and after the time of the receipt by the Industrial Accident Board of notice from any employer that the latter has become a subscriber under this law, all employés of said subscriber then and thereafter employed, shall be conclusively deemed to have notice of the fact that such subscriber has provided with the association for the payment of compensation under this law. If any employer ceases to be a subscriber he shall on or before the date on which his policy expires give notice to that effect to the Industrial Accident Board, and to such subscribers' employés by posting notices to that effect in three public places around such subscribers' plant.

#### Rights of Employés When Employer Not Subscriber

Sec. 4. Employés whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employés who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this law shall be applied in all such actions.

#### Exemplary Damages

Sec. 5. Nothing in this law shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employé whose death is occasioned by homicide from the wilful act or omission or gross negligence of any person, firm or corporation from the employer of such employé at the time of the injury causing the death of the latter. In any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct. In any such suit, such award, ruling or finding shall neither be pleaded nor offered in evidence.

Accrual of Compensation; Medical Aid, Etc.

Sec. 6. No compensation shall be paid under this law for an injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, chiropractic services, and medicines, as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employee shall be entitled to the medical aid, hospital service, chiropractic service, and medicines provided in this law. Provided further, that if such incapacity continues for four (4) weeks or longer, compensation shall be computed from the inception date of such incapacity.

Medical Services

Sec. 7. The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the association shall be obligated for same or, alternatively, at the employee's option, the association shall furnish such medical aid, hospital services, nursing, chiropractic services, and medicines as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury. Such treatment shall include treatments necessary to physical rehabilitation, including proper fitting and training in the use of prosthetic appliances, for such period as the nature of the injury may require or as necessary to reasonably restore the employee to his normal level of physical capacity or as necessary to give reasonable relief from pain, but shall not include any other phase of vocational rehabilitation. The obligation of the association to be responsible for hospital services as herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services.

Upon receipt thereof, the Board shall promptly analyze each notice of injury incurred by an injured employee covered under this law. If the Board concludes that vocational rehabilitation is indicated in any such case, it immediately shall take the necessary steps to inform the injured employee of the services and facilities available to him under the Texas Rehabilitation Commission and the Board immediately shall notify said Commission of such case. In each such case recommendation of services and facilities shall be made after consultation by the Board with the physician or chiropractor furnishing medical aid or chiropractic services as required by this Section, who shall retain general supervision of treat-

ment of the injured employee and, should the employee request it, the Board shall consult with a physician or chiropractor specially trained in such treatment. The Board shall co-operate with said Texas Rehabilitation Commission with reference to the work of said Commission in providing said services and facilities to injured employees covered under the provisions of this law.

Provided that any physician or chiropractor rendering medical or chiropractic care to any injured workman shall render an initial report as soon as practical identifying the injured workman and stating the nature and extent of the injury and thereafter shall render subsequent reports reasonably necessary to keep the status of the claimant's condition known. The reports are to be made to the Industrial Accident Board, the association, and the injured workman. The failure of the physician or chiropractor to make such reports shall relieve the association and the injured workman from any obligation to pay for the services rendered by the physician or chiropractor.

Change in Medical Aid, Hospital Services, Chiropractic Services and Medicines

Sec. 7a. If it be shown that the employee is receiving medical aid, hospital services, chiropractic services, and medicines provided for by Section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employee is being endangered or impaired thereby, the Board may order a change in the physician, chiropractor or other requirements of said section after holding a hearing on the change. If the employee fails promptly to comply with such order after receiving it, the Board may relieve the association from its responsibility to pay for or alternatively furnish medical aid, hospital services, chiropractic services, and medicines until such time as the employee complies with the order of the Board.

Fees and Charges for Medical Aid, Hospital Services, Chiropractic Services or Medicines

Sec. 7b. All fees and charges under Sections 7 and 7a hereof shall be fair and reasonable, shall be subject to regulation of the Board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or someone acting for him. In determining what fees are reasonable, the Board may also consider the increased security of payment afforded by this law. Where such medical aid, hospital service, chiropractic service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the Board.

Attorneys' Fees Regulated by the Board

Sec. 7c. All fees of attorneys for representing claimants before the Board under the pro-

visions of this law shall be subject to the approval of the Board. No attorneys' fees for representing claimants before the Board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to twenty-five per cent (25%) of the total recovery, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the Board, such expenses to be allowed by the Board. Where an attorney represents only a part of those interested in the allowance of a claim before the Board and his services in prosecuting such claim and obtaining an award there inures to the benefit of others jointly interested therein, then the Board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits from the service of such attorney. The attorneys' fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by the agreement of the parties subject to the approval of the Board, but not until the claim represented by said attorney has been finally determined by the Board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employee's compensation is payable by the association in periodical installments, the Board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services.

#### Attorneys' Fees Regulated by the Court

Sec. 7d. For representing the interest of any claimant in any manner carried from the Board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorneys' fee for such representation, not to exceed twenty-five per cent (25%) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

In fixing and allowing such attorneys' fees the court must take into consideration the benefit accruing to the beneficiary as a result of such services. No attorneys' fees (other than the amount which the Board may have approved) shall be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant by virtue of such representation, and then such attorneys' fees may be allowed only on a basis of services performed and benefits accruing to the beneficiary.

Provided, however, that in all cases involving fatal injuries where the Association admits liability on all issues involved and tenders payments of maximum benefits in writing under

this Act while the death benefits claim of such beneficiaries is pending before the Board, then no attorney fee shall be allowed.

#### Artificial Appliances

Sec. 7-e. (a) In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occupational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall not be liable for replacing or repairing any artificial appliances so furnished. The cost of such artificial appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee.

(b) In the event the association shall fail or refused to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances.

#### Death Benefit

Sec. 8. (a) If death results from the injury, the association shall pay the legal beneficiaries of the deceased employee a weekly payment equal to sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the employee's average weekly wage, but not less than the minimum weekly benefit nor more than the maximum weekly benefit set forth in Section 29 of this article.

(b) The weekly benefits payable to the widow or widower of a deceased employee shall be continued until the death or remarriage of the beneficiary. In the event of remarriage a lump sum payment equal in amount to the benefits due for a period of two (2) years shall be paid to the widow or widower. The weekly benefits payable to a child shall be continued until the child reaches eighteen (18) years of age, or beyond such age if actually dependent, or until twenty-five (25) years of age if enrolled as a full-time student in any accredited educational institution. All other legal beneficiaries are entitled to weekly benefits for a period of three hundred and sixty (360) weeks.

(c) Upon the termination of the eligibility of any child to receive benefits, the portion of compensation paid to such child shall thereaf-

ter be paid to any remaining child or children entitled to benefits under the provisions of this Act. If there is no other eligible child then such benefits shall be added to those being paid to the surviving spouse entitled to receive benefits under the provisions of this Act.

(d) The benefits payable to a widow, widower, or children under this section shall not be paid in a lump sum except in events of remarriage or in case of bona fide disputes as to the liability of the association for the death. Any settlement of a disputed case shall be approved by the board or court only upon an express finding that a bona fide dispute exists as to such liability.

Upon settlement of all cases where the carrier admits liability for the death but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by the law, with a reasonable attorney's fee not to exceed twenty-five per cent (25%) of the settlement. The attorney's fee shall be paid periodically and not in a lump sum.

**Persons to Whom Death Benefits Payable; Exemptions; Distributions; Payments**

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of lunacy, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law

shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

**Death After Period of Total or Partial Incapacity**

Sec. 8b. In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death.

**Funeral Expenses**

Sec. 9. If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury, and in addition a funeral benefit not to exceed Five Hundred Dollars (\$500).

If the deceased employee leaves a legal beneficiary or beneficiaries, and is buried at the expense of the beneficiary or beneficiaries, or is buried at the expense of his employer or any other person, the expense of such burial, not to exceed Five Hundred Dollars (\$500), shall be payable without discount for present payment to the person or persons at whose expense the burial occurred, subject to the approval of the Board; and such burial expense, regardless of to whom it is paid, shall be in addition to the compensation due the beneficiary or beneficiaries of such deceased employee.

**Total Incapacity**

Sec. 10. While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) of his average weekly wages, but not more than the maximum weekly benefit nor less than the minimum weekly benefit set forth in Section 29 of this article, and in no case shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of injury.

**Partial Incapacity**

Sec. 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than the maximum weekly benefit set forth in Section 29 of this article. The period covered by such compensation shall be in no case greater than three hundred (300) weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one (401) weeks from the date of injury. Compensation for all partial incapacity resulting from a general injury shall be computed in the manner provided in this Section, and shall not be computed on a basis of a percentage of disability.

## Injuries Constituting Total and Permanent Incapacity

Sec. 11a. In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to-wit:

- (1) The total and permanent loss of the sight of both eyes.
- (2) The loss of both feet at or above the ankle.
- (3) The loss of both hands at or above the wrist.
- (4) A similar loss of one hand and one foot.
- (5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.
- (6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent, total incapacity.

## Specific Compensation

Sec. 12. For the injuries enumerated in the following schedule the employee shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages of such employee, but not less than the minimum weekly benefit per week nor exceeding the maximum weekly benefit set forth in Section 29 of this article, for the respective periods stated herein, to wit:

For the loss of a thumb, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during forty-five (45) weeks.

For the loss of a second finger, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wage during thirty (30) weeks.

For the loss of a third finger, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during twenty-one (21) weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during fifteen (15) weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half ( $\frac{1}{2}$ ) of such thumb; the loss of more than one-half ( $\frac{1}{2}$ ) of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third ( $\frac{1}{3}$ ) of such finger.

The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole finger, provided that in no case shall the amount received for the loss of a thumb and more than one (1) finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger or fingers above, add ten (10) weeks to the number of weeks as above subject to the limitation that in no case shall the amount received for the loss or injury to any one (1) hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wage during one hundred and fifty (150) weeks.

For the loss of an arm at or above the elbow, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wage during two hundred (200) weeks.

For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during ten (10) weeks.

For the loss of the great toe, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during thirty (30) weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half ( $\frac{1}{2}$ ) of the toe.

For the loss of a foot, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, at or above the knee, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during two hundred (200) weeks.

For the total and permanent loss of the sight of one (1) eye, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average

weekly wages during one hundred (100) weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and leg above the knee, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and an arm above the elbow, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during a period of three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages during a period of three hundred (300) weeks.

Where the employee sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this Section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one (1) member, for which member compensation is provided in this schedule, compensation for specific injuries under this law shall be cumulative as to time and not concurrent.

In all cases of permanent partial incapacity it shall be considered that the permanent loss of the use of the member is equivalent to, and shall draw the same compensation as the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases of partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee, and the age at the time of the injury. The compensation paid therefor shall be calculated by first determining a basic figure amounting to sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the average weekly wages of the employee, but which basic figure shall not exceed the maximum weekly benefit set forth in Section 29 of

this article; such basic figure shall then be multiplied by the percentage of incapacity caused by the injury, and the result shall be the weekly compensation which shall be paid for such period not exceeding three hundred (300) weeks as the Board may determine. Whenever the weekly payments under this paragraph would be less than Three Dollars (\$3) per week, the period may be shortened, and the payments correspondingly increased by the Board.

#### Injured Employé, Refusal of Employment

Sec. 12a. If the injured employé refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this law.

#### Hernia

Sec. 12b. In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately following the injury.
3. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.
4. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employé refuses to submit to the operation, the board shall immediately order a medical examination of such employé by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employé and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a written report, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the board by such examination and such report thereof and the expert opinions thereon that the employé has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this law. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition

rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employé and the association with a copy of its findings, then if the employé with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this law for a period not exceeding one year.

If the employé submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this law the same as if such operation had not been had; other than in determining the compensation to be paid to the employé, the board may take into consideration any minor benefits that accrued to the employé by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under this law. This paragraph shall not apply where the employé has wilfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe.

#### Subsequent Injury; Second Injury Fund

Sec. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable for all compensation provided by this Act, but said association shall be reimbursed from the "Second Injury Fund" as hereinafter described, to the extent that the previous injury contributes to the combined incapacity.

#### Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ

Sec. 12c-1. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable for all compensation provided by this Act, not to exceed 401 weeks, but said association shall be reimbursed from the "Second Injury Fund," as hereinafter described, to the extent that its payment exceeds the amount due for the second injury as above set out. In order to qualify for reimbursement from the "Second Injury Fund" under this section, the association must file its

claim with the Industrial Accident Board within 180 days following date of injury, together with evidence of its payment of all compensation provided by this Act and of the preexisting permanent physical impairment qualifying the association for such reimbursement. Good cause for late filing as set forth in Section 4(a), Article 8307, Revised Civil Statutes of Texas, 1925, as amended, shall also apply in such claims for reimbursement. Provided further, if the association makes payment in a lump sum to the injured claimant, the association shall be entitled to reimbursement from the "Second Injury Fund" by lump sum payment.

#### Second Injury Fund; How Created

Sec. 12c-2. The special fund known as the "Second Injury Fund" shall be created in the following manner:

(a) In every case of the death of an employee under this Act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the full death benefits, but not to exceed 360 weeks of compensation, as provided in Section 8, of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof.

(b) When the total amount of all such payments into the Fund, together with the accumulated interest thereon, equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000) in excess of existing liabilities, no further payments shall be required to be paid to said Fund; but whenever thereafter the amount of such Fund shall be reduced below One Hundred Twenty-Five Thousand Dollars (\$125,000) by reason of payments from such Fund, the payments to such Fund shall be resumed forthwith, and shall continue until such Fund again amounts to Two Hundred Fifty Thousand Dollars (\$250,000) including accumulated interest thereon.

#### Change of Condition, Mistake or Fraud; Review

Sec. 12d. Upon its own motion or upon the application of any person interested showing a change of condition, mistake or fraud, the Board at any time within the compensation period, may review any award or order, ending, diminishing or increasing compensation previously awarded, within the maximum and minimum provided in this Law, or change or revoke its previous order denying compensation, sending immediately to the parties a copy of its subsequent order or award. Provided, when such previous order has denied compensation, application to review same shall be made to the Board within twelve months after its entry, and not afterward. Review under this Section shall be only upon notice to the parties interested.

**Surgical Operation**

Sec. 12e. In all cases where liability for compensation exists for an injury sustained by an employé in the course of his employment and a surgical operation for such injury will effect a cure of the employé or will materially and beneficially improve his condition, the association or the employé may demand that a surgical operation be had upon the employé as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employé in the same manner as is provided for in the section of this law relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employé or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employé and the association, shall direct the employé at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employé shall continue to be compensated for his incapacity under the general provisions of this law. If the board shall unanimously find and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employé refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employé shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this law.

**Physicians or Chiropractors Employed by Subscriber or Association**

Sec. 12f. In all cases where a subscriber or the association has in his or its employ a physician or physicians, a chiropractor or chiropractors, regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employees, the name or names of such physicians or chiropractors at the date of employment of the same shall be filed with the Board together with a copy of the contract of such employment. If the contract of such physician or physicians, chiropractor or chiropractors is not in writing, then the same shall be reduced to writing and a copy thereof filed with the Board. Such contract shall state fully the extent and scope of

the employment and the compensation to be paid such physicians or chiropractors. If the association or subscriber willfully fails or refuses to comply with this provision of this law, then an injured employee or any person acting for him shall have the right to provide hospital services, chiropractic services, medical aid and medicine for said injured employee, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employee at or before the time of injury what physician or physicians, chiropractor or chiropractors are contracted with to attend and render professional services to his or its employees.

**Insurance Premiums**

Sec. 12g. It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this law to either directly or indirectly collect of or from his employés by any means or pretense whatever any premium under this law or part thereof paid or to be paid upon any policy of such insurance under this law which covers such employés, or any intended policy of such insurance designed to cover such employés. If any such subscriber or any employer of labor in this State violates this provision of this law, then any employé or the legal beneficiary of any employé of such employer or subscriber shall be entitled to all the benefits of this law and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employé or beneficiary under this law. The association shall in no wise be responsible because of such separate action by such employé or beneficiary against such employer on such separate cause of action.

**Indemnity or Insurance Contracts**

Sec. 12h. Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employé by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employés have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law who do not elect to do so, but who choose to carry insurance upon their employés independently of this law and without attempting in such insurance to provide compensation under the terms of this law. Any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this law, to write insurance substantially or in any material respect similar to the insurance provided for by this law shall render such insurance void as provided for in this section.

**Minors**

Sec. 121.<sup>1</sup> If it be established that the injured employee were a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages, and compensation may be fixed accordingly.

A minor who has been employed in any hazardous or other employment which is prohibited by any Statute of this State, shall nevertheless be entitled to receive compensation under the terms and provisions of this Act. Provided, that this Section shall not be construed to excuse or justify any person, firm or corporation employing or permitting to be employed a minor in any hazardous or other employment prohibited by any Statute of this State.

<sup>1</sup> So in enrolled bill. Probably should be "121."

**Minor or Incompetent Injured Employé**

Sec. 13. If an injured employé is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any right or privileges accrue to him or exist under this law, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided. In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipt taken therefor, if the authority to so pay and receipt therefor is first obtained from the board.

**Waiver of Right to Compensation**

Sec. 14. No agreement by any employé to waive his rights to compensation under this law shall be valid.

**Lump Sum Settlement**

Sec. 15. In cases where death or incapacity in any degree results from an injury, the liability of the association may be redeemed by the payment of a lump-sum by agreement of the parties thereto subject to the approval of the Industrial Accident Board. Where in the judgment of the Board manifest hardship and injury would otherwise result, the Board may compel the association to redeem the liability by payment of the award of the Board in a lump-sum, and a discount shall be allowed for present payment in accordance with Article 8306a, of the Revised Civil Statutes of 1925, as amended.

**Increase of Weekly Compensation**

Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the Board that the amount of compensation being paid is inadequate to meet the necessities of the employee or beneficiary, the Board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, allowing discount for present payment at the rate of four (4%) per cent, compounded annually; provided that in no case shall the amount to

which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the Board.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas.

**Death, Survival of Cause of Action**

Sec. 16. In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive.

**Non-resident and Resident Alien Beneficiaries**

Sec. 17. Non-resident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution for such non-resident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not residents of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the board.

**Weekly Compensation; Non-payment; Forfeiture or Revocation of Association's License**

Sec. 18. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. If the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law, the board shall have the power to hold that such association is not complying with the provisions of this law, and shall certify such fact to the Commissioner of Insurance, and said certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas; provided, said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board.

**Injuries Sustained Outside State; Venue**

Sec. 19. If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compen-

sation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5-5a, shall be brought either

a. In the county of Texas where the contract of hiring was made; or

b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred..

**"Injury" or "Personal Injury", and "Occupational Disease" Defined; Ordinary Diseases**

Sec. 20. Wherever the terms "Injury" or "Personal Injury" are used in the Workmen's Compensation Laws of this State, such terms shall be construed to mean damage or harm to the physical structure of the body and such diseases or infections as naturally result therefrom. The terms "Injury" and "Personal Injury" shall also be construed to mean and include "Occupational Diseases," as hereinafter defined. Whenever the term "Occupational Disease" is used in the Workmen's Compensation Laws of this State, such term shall be construed to mean any disease arising out of and in the course of employment which causes damage or harm to the physical structure of the body and such other diseases or infections as naturally result therefrom. An "Occupational Disease" shall also include damage or harm to the physical structure of the body occurring as the result of repetitious physical traumatic activities extending over a period of time and arising in the course of employment; provided, that the date of the cumulative injury shall be the date disability was caused thereby. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident to an "Occupational Disease" or "Injury" as defined in this section.

**False Representations as to Previous Disease**

Sec. 21. If the employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously been afflicted with the occupational disease which is the

cause of incapacity or death, no compensation shall be payable.

**Aggravation of Previously Existing Diseases**

Sec. 22. Where an occupational disease is aggravated by any other non-compensable disease or infirmity, or where incapacity or death from any other non-compensable cause, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the Association shall be reduced and limited to such proportion only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the Association is liable.

**Retroactive Effect of Statute**

Sec. 23. The provisions of this Act do not apply to cases of incapacity or death resulting from a disease in which the last injurious exposure to the hazards of such disease occurred before the date on which this Act takes effect.

**Employer, Who Deemed**

Sec. 24. Where compensation is payable for an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of such disease shall be deemed the employer within the meaning of the Act.

Secs. 25 to 27. Repealed by Acts 1971, 62nd Leg., p. 2540, ch. 834, § 2, eff. Aug. 30, 1971

**Workmen's Compensation Fund**

Sec. 28. There is hereby established as a special fund, separate and apart from all public monies or funds of this state, a Workmen's Compensation Fund which shall be used by the Board for the purpose of paying costs of the administration of the law, in addition to amounts appropriated by the Legislature of the State of Texas. The State Treasurer shall be the treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Board, and the Comptroller shall issue warrants upon it in accordance with the directions of the Board. In addition to all other taxes now being paid, each stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyds Association writing Workmen's Compensation insurance in this state, shall pay annually into the State Treasury, for the use and benefit of the Workmen's Compensation Fund, an amount equal to one-fourth ( $\frac{1}{4}$ ) of one percent (1%) of gross premiums collected by such company or association during the preceding year under workmen's compensation policies written by such companies or associations covering risks in this state according to the reports made to the Board of Insurance Commissioners as required by law. Said amount shall be collected at the

same time and in the same manner as provided by law for the collection of taxes on gross premiums of such workmen's compensation insurance carriers. All self-insurers under any of the Workmen's Compensation Acts of the State of Texas shall report to the State Board of Insurance the total amount of their medical and indemnity costs for the previous year and pay a like amount of tax as provided above on said total amount of medical and indemnity costs. The Industrial Accident Board is hereby authorized and directed to decrease the amount of tax herein provided for any year if the revenue received from House Bill 686, 62nd Legislature, 1971<sup>1</sup>, produces sufficient revenue to pay the appropriations authorized the Industrial Accident Board by the Legislature for that year. Failure to make any report required by this Section shall be punishable by fine not to exceed One Thousand (\$1000) Dollars and the failure to pay any tax within thirty (30) days after same is due under this Section shall be punishable by a penalty of ten percent (10%) of the amount, and shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas and such penalties when collected shall be deposited in the State Treasury for the use and benefit of the Workmen's Compensation Fund.

#### Maximum and Minimum Weekly Benefits

Sec. 29. (a) After August 31, 1973, and before September 1, 1974, the maximum weekly benefit shall be Sixty-three Dollars (\$63) and the minimum weekly benefit shall be Fifteen Dollars (\$15).

(b) After August 31, 1974, the maximum weekly benefit shall be Seventy Dollars (\$70) and the minimum weekly benefit shall be Sixteen Dollars (\$16).

(c) If the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1974 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit shall be increased by Seven Dollars (\$7) and the minimum weekly benefit shall be increased by One Dollar (\$1) above the amounts specified in Subsection (b) of this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each additional Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas as annually determined and reported by the Texas Employment Commission shall increase the maximum weekly benefit by an additional Seven Dollars (\$7) and the minimum weekly benefit by an additional One Dollar (\$1) beginning with the commencement of the state fiscal year following the publication of the report.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 41, ch. 28, § 1; Acts 1927, 40th Leg., p. 84, ch. 60, § 1; Acts 1927, 40th Leg., p. 383, ch. 259; Acts 1931, 42nd Leg., p. 133, ch. 90, § 1; Acts 1931, 42nd Leg., p. 259, ch. 154, § 1;

Acts 1931, 42nd Leg., p. 260, ch. 155, § 1; Acts 1931, 42nd Leg., p. 303, ch. 178, § 1; Acts 1937, 45th Leg., p. 535, ch. 261, § 1; Acts 1939, 46th Leg., p. 712, § 1; Acts 1941, 47th Leg., p. 854, ch. 529; Acts 1947, 50th Leg., p. 176, ch. 113, §§ 3 to 6; Acts 1947, 50th Leg., p. 521, ch. 307, § 1; Acts 1947, 50th Leg., p. 690, ch. 349, § 1; Acts 1951, 52nd Leg., p. 127, ch. 78, § 1; Acts 1953, 53rd Leg., p. 492, ch. 177, § 4; Acts 1953, 53rd Leg., p. 493, ch. 178, §§ 1, 2, 3, 5; Acts 1955, 54th Leg., p. 36, ch. 26, § 1; Acts 1955, 54th Leg., p. 662, ch. 233, § 1; Acts 1957, 55th Leg., p. 1186, ch. 397, § 1; Acts 1959, 56th Leg., p. 55, ch. 30, § 1; Acts 1959, 56th Leg., p. 783, ch. 357, § 1; Acts 1959, 56th Leg., p. 778, ch. 355, § 2; Acts 1961, 57th Leg., p. 1032, ch. 455, § 1; Acts 1963, 58th Leg., p. 503, ch. 188, §§ 1, 2; Acts 1963, 58th Leg., p. 1132, ch. 437, § 1; Acts 1965, 59th Leg., p. 818, ch. 396, § 1; Acts 1967, 60th Leg., p. 451, ch. 204, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 48, ch. 18, §§ 2 to 8, eff. May 18, 1969; Acts 1969, 61st Leg., p. 499, ch. 165, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1257, ch. 316, §§ 1 to 3, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 1386, ch. 372, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1754, ch. 514, § 1, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 2539, ch. 834, §§ 1, 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 187, ch. 88, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 187, ch. 88, §§ 2 to 8, eff. Sept. 1, 1973.]

Section 1 of Acts 1969, 61st Leg., p. 48, ch. 18, provided: "This Act shall be entitled 'The Workmen's Compensation Administrative Reform Bill of 1969.' The purpose of this Act is to provide prompt and fair workmen's compensation payments for injured workers, to minimize the expense and delay of court action and the resulting drain on the resources of the claimant; to provide for equitable administration of the law with the goal of channeling the largest possible amount of the premium dollar into the pocket of the injured worker."

Sections 2 to 8 of the act of 1969 amended secs. 7c, 7d, 8, 10, 11, 12 and 12c-2 of this article; sections 9 and 10 amended art. 8307, §§ 3, 10; section 11 amended art. 8309, § 4; and section 12 amended art. 8309a.

Sections 13 to 15 of the amendatory act of 1969 provided:

"Sec. 13. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 14. If any Section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining Sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 15. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

Section 16 of Acts 1969, 61st Leg., p. 48, ch. 18, an emergency provision, was amended by Acts 1969, 61st Leg., p. 334, ch. 121, § 1, to provide that Chapter 18 "shall take effect and be in force at 12:01 A.M., May 18, 1969."

Sections 4 to 6 of Acts 1971, 62nd Leg., p. 1258, ch. 316, provided:

"Sec. 4. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further, this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 5. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 6. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

Sections 2 to 4 of Acts 1971, 62nd Leg., p. 1386, ch. 372, provided:

"Sec. 2. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 3. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 4. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

Sections 3 to 6 of Acts 1971, 62nd Leg., p. 2539, ch. 834, provided:

"Sec. 3. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further that this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 4. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 5. It is the express intent of the Legislature in enacting this Act that nothing contained in this Act shall ever be deemed or considered to limit or expand recovery in cases of mental trauma accompanied by physical trauma.

"Sec. 6. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

Sections 21 and 22 of Acts 1973, 63rd Leg., p. 187, ch. 88, provided:

"Sec. 21. Section 1 of this Act takes effect January 1, 1974; Section 16 takes effect on the first day that money becomes available for its administration, pursuant to legislative appropriation; and Sections 17 and 18 of this Act take effect July 1, 1974. All other sections of this Act take effect September 1, 1973.

"Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 8306a. Discount for Present Payment

In all cases when the payments of weekly compensation due an injured employee or beneficiary coming within the provisions of the Workmen's Compensation Act are accelerated by increasing the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, and when the liability of the insurance company is redeemed by the payment of a lump sum, by agreement of parties interested, or as a result

of an order made by the Industrial Accident Board or a judgment rendered by a court of competent jurisdiction, and when advanced payments of compensation are made, and in all cases when compensation is paid before becoming due, discount shall be allowed for present payment at four (4%) per cent, compounded annually.

Provided, however, where suits are legally brought by any claimant or beneficiary under any of the provisions of this Act and recovery is had for past due weekly installments, such claimant or beneficiary shall be entitled to recover interest on such past due installments at the rate of four (4%) per cent, compounded annually. Any judgment rendered pursuant to any of the provisions of this Act shall bear interest from the date it is rendered until paid at the rate of four (4%) per cent, compounded annually.

Provided, however, future installments of compensation payable to alien beneficiaries, not residents of the United States, may be commuted and paid according to the terms and provisions of Section 17, Article 8306 of the Revised Civil Statutes of 1925; and provided further, when either party shall appeal from the award of the Industrial Accident Board to the District Court, the District Court shall try the matter appealed from only, and shall not in said trial adjudicate in any way any right to exemplary damages, as is granted in Section 26 of Article XVI of the Constitution of Texas.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas.

[Acts 1931, 42nd Leg., p. 415, ch. 248, § 1; Acts 1951, 52nd Leg., p. 127, ch. 78, § 2; Acts 1955, 54th Leg., p. 36, ch. 26, § 2.]

Section 2 of the act of 1931 repealed all conflicting laws and parts of laws.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of the conflict.

## PART 2

### Art. 8307. Industrial Accident Board

#### Members; Powers

Sec. 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Said board shall have the powers, duties and functions hereinafter conferred.

#### Eligibility of Members

Sec. 2. At the time of each appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board.

**Secretary; Pre-hearing Officers; Clerical Services; Expenses**

Sec. 3. The Board may appoint a Secretary, pre-hearing officers and other employees as may be necessary to properly administer this Act. It shall also be allowed a reasonable sum, the amount to be determined by the Legislature, for pre-hearing officers, clerical and other services, office equipment, traveling expenses and all other expenses necessary.

**Rules: Physical Examination; Suspension of Compensation; Procedure and Powers**

Sec. 4. The Board may make rules not inconsistent with this law for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians, a chiropractor or chiropractors authorized to practice under the laws of this State. If the employee or the association requests, he or it shall be entitled to have a physician or physicians, chiropractor or chiropractors of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment, chiropractic service or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

When authorized by the Board, the Association shall have the privilege of having any injured employee examined by a physician or physicians, chiropractor or chiropractors of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Association shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician or chiropractor of his own selection present to participate in such examination. Provided, when such examination is directed by the Board at the request of the Association, the Association shall pay the fee of the physician or chiropractor selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this law. The Board or any

member thereof shall have the power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute, punish for contempt in the same manner and to the same extent as a District Court may do, and to bar persons guilty of unethical or fraudulent conduct from practicing before the Board. All rulings and decisions of the board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

**Notice of Injury; Claim for Compensation**

Sec. 4a. Unless the Association or subscriber have notice of the injury, no proceeding for compensation for injury under this law shall be maintained unless a notice of the injury shall have been given to the Association or subscriber within thirty (30) days after the happening of an injury or the first distinct manifestation of an occupational disease, and unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of the injury or of the first distinct manifestation of an occupational disease; or, in case of death of the employee or in the event of his physical or mental incapacity, within six (6) months after death or the removal of such physical or mental incapacity. For good cause the Board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice, and the filing of the claim before the Board.

**Determination of Questions; Suit to Set Aside Final Ruling and Decision; Revocation of Association's License**

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place or business, or by agreement of the parties in a court of competent jurisdiction in any county in this state.

Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden or<sup>1</sup> proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation

of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law.

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

#### Rights and Remedies of Claimant

Sec. 5a. In all cases where the board shall make a final order, ruling or decision as provided in the preceding section and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section is provided, then in that event, the claimant in addition to the rights and remedies given him and the board in said section may bring suit where the injury occurred, upon said order, ruling or decision. If he secures a judgment sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the board has made an award against an association requiring the payment to an injured employé or his beneficiaries of any weekly or monthly payments, under the terms of this law, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employé or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as herein provided for. Suit may be brought under the provisions of this section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

#### Computation of Time for Notice or Suit

Sec. 5b. In computing the twenty (20) days for the filing with the Board notices of unwillingness to abide by the final ruling and deci-

sion of the Board, and likewise in computing the twenty (20) days to institute a suit to set aside the final ruling of said Board, if the last day is a legal holiday or is Sunday, then, and in such case, such last day shall not be counted, and the time shall be and the same is hereby extended so as to include the next succeeding business day; but this provision shall not extend to or include any cases now filed or now pending in the trial court or on appeal from the trial court; the rights of the parties in such suits now pending or on appeal from the trial courts shall be determined by the law existing prior to the passage of this Act.

**Multiple Subscribers; Payment of Claims; Deposit of Proportionate Share Prior to Liability Determination**

Sec. 5c. In any proceeding in which it is determined that compensation, including costs for medical services incurred, is allowable in a sum certain for injuries sustained by an employee, but there is a dispute with respect to which of two or more subscribers said employee was serving at the time of injury, the Association and other workmen's compensation insurer, or insurers, of each such subscriber shall be required to deposit with the Board or court a proportionate share of the compensation awarded, including costs for medical services incurred, for the injuries received. Such proportionate share due from the Association and other workmen's compensation insurer, or insurers, shall be determined by dividing the compensation awarded, including costs for medical services incurred, by the number of subscribers who are alleged to have been the employer of the injured employee at the time of injury, and the Association and workmen's compensation insurer of each such subscriber shall pay such proportionate share, or shares, depending on whether they insure one or more of such subscribers. The Board or court shall deliver the full amount of the workmen's compensation award, including costs for medical services incurred, in the same manner as if the sum had been paid only by the responsible insurer. Thereafter, upon final determination of liability for compensation, whether by agreement, award of the Board or order of the court, the insurer, or insurers found not to be liable shall be entitled to reimbursement for its, or their, proportionate share deposited with the Board or court from the insurer who is determined to be liable for compensation and medical costs incurred.

**Employé of Sub-contractor**

Sec. 6. If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms sublets the whole or any part of the work to be performed or done by said subscriber to any sub-contractor, then in the event of any employé of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this law to be the employé of the subscriber, and in addition thereto such

employé shall have an independent right of action against such sub-contractor, which shall in no way be affected by any compensation to be received by him under the provisions of this law.

**Recovery From Third Person; Subrogation; Attorney's Fees**

Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may proceed either at law against that person to recover damages or against the association for compensation under this law, and if he proceeds at law against the person other than the subscriber, then he shall not be held to have waived his rights to compensation under this law. If the claimant is a beneficiary under the death benefits provisions of Section 8a, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, a judgment shall not constitute an election but the amount of such recovery shall first pay costs and attorney's fees and then reimburse the association, and if there be any excess it shall be paid to the beneficiaries in the same ratio as they received death benefits and the association shall suspend further payments of benefits until the suspended benefits shall equal the amount of such excess at which time benefits shall be resumed. If compensation be claimed under this law by the injured employee or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employee, and may enforce in the name of the injured employee or of his legal beneficiaries the liability of said other person, and in case the recovery is for a sum greater than that paid or assumed by the association to the employee or his legal beneficiaries, then out of the sum so recovered the association shall reimburse itself and pay said costs and the excess so recovered shall be paid to the injured employee or his beneficiaries. However, when the claimant is represented by an attorney, and the association's interest is not actively represented by an attorney, the association shall pay such fee to the claimant's attorney not to exceed one-third ( $\frac{1}{3}$ ) of said subrogation recovery or as may have been agreed upon between the claimant's attorney and the association or in the absence of such agreement the court shall allow a reasonable attorney's fee to the claimant's attorney for recovery of the association's interest which in no case shall exceed thirty-three and one-third per cent ( $33\frac{1}{3}\%$ ) payable out of the association's part of the recovery. In any case where the claimant's attorney is also representing the subrogated association, a full written disclosure must be made to the claimant, prior to actual employment by the association as an attorney, and acknowledged by the claimant, and a signed copy of the same furnished to all concerned parties and made a part of the file in the Industrial Accident Board. A copy of the disclosure with authorization and consent, shall also be filed

with the claimant's pleadings prior to any judgment entered and approved by the court. Unless the claimant's attorney complies with all of the requirements as prescribed in this section, the attorney shall not be entitled to receive any of the fees prescribed in this section to which he would be entitled pursuant to an agreement with the association.

If the association obtains an attorney to actively represent its interest and if the attorney actively participates in obtaining a recovery, the court shall award and apportion an attorney's fee allowable out of the association's subrogation recovery between such attorneys taking into account the benefit accruing to the association as a result of each attorney's service, the aggregate of such fees not to exceed thirty-three and one-third per cent (33-1/3%) of the subrogated interest.

If at the conclusion of a third party action a workmen's compensation beneficiary is entitled to compensation, the net amount recovered by such beneficiary from the third party action shall be applied to reimburse the association for past benefits and medical expenses paid and any amount in excess of past benefits and medical expenses shall be treated as an advance against future benefit payments of compensation to which the beneficiary is entitled to receive under the Act. When the advance is adequate to cover all future compensation and medical benefit payments as provided by this law, no further payments shall be made by the association but if insufficient, the association shall resume such payments when the advance is exhausted. The reasonable and necessary medical expenses incurred by the claimant on account of the injury shall be deducted from the advance in the same manner as benefit payments.

#### Record of Injuries; Reports

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or within eight (8) days after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and

the nature and cause of the injury, and such other information as the Board may require. Any employer wilfully failing or refusing to make any such report within the time herein provided, or wilfully failing or refusing to give said Board any information demanded by said Board relating to any injury to any employee, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than One Thousand (\$1,000.00) Dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney, under his direction, in a District Court thereof.

#### Failure to File Report; Limitation on Filing of Claim

Sec. 7a. Where the association or subscriber has been given notice or the association or subscriber has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report thereof as required by the provisions of Section 7 of this Article, the limitation in Section 4a of this Article in respect to the filing of a claim for compensation shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the association or subscriber until such report shall have been furnished as required by Section 7 of this Article.

#### Claim Forms to Employee; Filing Requirements

Sec. 7b. Upon receipt of the written report required under Section 7 of this Article the Industrial Accident Board shall immediately furnish the injured employee claim forms which shall clearly inform the employee of the filing requirements of Section 4a of this Article, and if applicable, Section 7a of this Article.

#### Quorum of Board; Seal; Proceedings as Evidence

Sec. 8. A majority of the Board shall constitute a quorum to transact business, and the Act or decision of any two members thereof shall be held the act or decision of the Board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the Board to exercise all the powers of the Board. The Board shall provide itself with a seal on which shall be inscribed the words "Industrial Accident Board, State of Texas." Any Order, award or proceeding of said Board when duly attested by any member of the Board or its secretary, shall be admissible as evidence of the act of said Board in any Court of this State.

#### Certified Copy of Records; Fees

Sec. 9. Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said board, and

the fees so received for such copies shall be paid into the State Treasury and credited to the general revenue fund. No fee or salary shall be paid to any person in said department for making such copies in excess of the fees charged for such copies.

Hearings; Investigations; Appearance of Claimants;  
Pre-hearing Conferences and Officers; Rules  
and Regulations

Sec. 10. (a) Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within this state, reporting the result thereof, if the same is made by one member, to the Board. The Board shall also employ and use the assistance of a sufficient number of pre-hearing officers for the purpose of adjusting and settling claims for compensation; provided, however, that pre-hearing officers shall not be empowered to take testimony.

Notwithstanding any provision of this Act, no claimant shall be required to appear before the Board or Board Member within a distance greater than one hundred (100) miles from the courthouse of the county of the claimant's residence or within a greater distance than one hundred (100) miles of the courthouse of the county where the injury occurred.

(b) The Board shall examine and review all controverted claims and shall schedule and hold pre-hearing conferences on such claims as the Board may designate. It shall have the power to direct the parties, their attorneys or the duly authorized agents of the parties to appear before the Board, any member thereof or a pre-hearing officer for pre-hearing conferences to attempt to adjust and settle the claim amicably and to take such other action other than taking of testimony that may aid in the disposition of the claim. Provided, however, that no matter occurring during, or fact developed in, a pre-hearing conference shall be deemed as admissions or evidence or impeachment against the association, employee or the subscriber in any proceedings before the Board, or elsewhere in a contested case where the facts involved therein or in any one of them is sought to be contradicted by the association, employee or the subscriber. The Board shall promulgate procedural rules and regulations not inconsistent with this law to govern such pre-hearing conferences and provided further, such rules and regulations shall not affect nor change any substantive portion of this law.

Association Suspending Payments

Sec. 11. When the association suspends or stops payment of compensation, it shall immediately notify the board of that fact, giving the board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon, and the reason for such suspension or stopping.

Compensation Payments; Compromise; Commutation

Sec. 12. The board upon application of either party may, in its discretion, having regard

to the welfare of the employé and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Where the liability of the association or the extent of the injury of the employé is uncertain, indefinite or incapable of being satisfactorily established, the board may approve any compromise, adjustment, settlement or commutation thereof made between the parties.

Medical Committee; Examination of Employee; Report

Sec. 13. (a) If, on the hearing of a claim for compensation for occupational disease, any controverted medical question or questions shall arise, upon the request of either party, or its own motion, the Board shall appoint a Medical Committee consisting of three (3) doctors, duly qualified in the diagnosis and treatment of occupational diseases, and licensed to practice in the state, and the Board shall reserve its decision and award until it shall have received a report from such Medical Committee. The date of incapacity, if in dispute, shall be deemed to be a medical question.

(b) The Medical Committee, upon reference to it of a case of occupational disease, shall notify the employee, or, in case he be dead, his beneficiary or beneficiaries, and the Association to appear before the Medical Committee at a time and place stated in the notice. If the employee be living he shall appear before the Medical Committee at the time and place specified, and he shall submit to such examinations including clinical and x-ray examinations as the Medical Committee may require. The employee, or, if he be dead, his beneficiary or beneficiaries, and the Association shall be entitled to have present at all such examinations a physician of his or its own selection, who shall be given an opportunity to witness the same, and whose services shall be paid for by the person who engaged his services. The claimant and the Association shall produce to the Medical Committee all reports, medical and x-ray examinations which may be in their respective possession or control showing the past or present condition of the employee, to assist the Medical Committee in reaching its conclusion.

(c) The Medical Committee shall, if it deems advisable, inspect or cause to be inspected, the plant or industrial operation or process, where the exposure to the occupational disease is alleged to have occurred, to determine whether such conditions exist in such plant, industrial operation or process as to produce the occupational disease complained of.

(d) The Medical Committee shall, as soon as practicable after it has completed its consideration of a case, report to the Board its opinion regarding all medical questions involved in the case. The Medical Committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or Association and what, if any, medical reports and x-rays were produced by or on behalf of the claimant or Association.

(e) The Medical Committee shall file its report in triplicate with the Board, which shall send one copy thereof to the claimant and one copy to the Association. All fees, costs, and expenses incident to the functioning of said Medical Committee shall be paid by the party requesting same; the Board shall determine the reasonableness of said fees, costs and expenditures.

(f) If the employee refuses to submit to such examination, all action on his claim for compensation shall be suspended during such period as he persists in such refusal.

(g) Where a case of occupational disease is pending in any court of this state, upon the motion of either party, or upon its own motion, the court shall appoint a Medical Committee consisting of three (3) doctors duly qualified in the diagnosis and treatment of occupational diseases and licensed to practice in the state, and shall direct the employee to submit to examination, including clinical and x-ray examination, as the Medical Committee may require or deem advisable. The Medical Committee shall report its findings and conclusions in open court, and such may be rebuttable. The court shall pass on the reasonableness of the fees, costs and other expenditures of the Medical Committee, which fees shall be taxed as costs.

#### Autopsy

Sec. 14. Upon the filing of a claim for compensation for death by reason of an occupational disease where an autopsy is necessary to accurately and scientifically determine the cause of death, upon the request of either party, or on its own motion, such autopsy shall be ordered by the Board. The Board shall designate a duly licensed physician, who is a specialist in such examinations, to perform or attend such autopsy, and to certify his findings thereon. Such findings are to be filed with the Board and shall be a public record. All proceedings for compensation shall be suspended upon refusal of the beneficiaries of the deceased employee to permit such autopsy when ordered, and no compensation shall be payable for any period during which such autopsy is refused. No autopsy shall be held in any case, by any person, without notice first being given to the parties in interest, (if they reside in this state or their whereabouts can be reasonably ascertained,) of the time and place thereof, and reasonable time and opportunity given such parties in interest to have a representative or representatives present to witness the same. If such notice is not given, all evidence obtained by such autopsy shall be suppressed on motion duly made to the Board.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 328, ch. 223, § 1; Acts 1931, 42nd Leg., p. 132, ch. 89, § 1; Acts 1931, 42nd Leg., p. 175, ch. 102, § 1; Acts 1931, 42nd Leg., p. 378, ch. 224, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1890, ch. 19, § 1; Acts 1947, 50th Leg., p. 180, ch. 113, §§ 10 to 14; Acts 1953, 53rd Leg., p. 493, ch. 178, § 6; Acts 1957, 55th Leg., p. 1186, ch. 397, § 2; Acts 1969, 61st Leg., p. 48, ch. 18, §§ 9, 10, eff. May 18, 1969; Acts 1971, 62nd Leg., p. 940, ch.

152, § 1, eff. May 11, 1971; Acts 1971, 62nd Leg., p. 3006, ch. 993, §§ 1, 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 193, ch. 88, § 10, eff. Sept. 1, 1973.]

#### Art. 8307a. Suit to Set Aside Decision of Industrial Accident Board; Transfer to County Where Injury Occurred

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Industrial Accident Board shall, in the manner and within the time provided by Section 5 of Article 8307, Revised Civil Statutes of 1925, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merits, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

[Acts 1931, 42nd Leg., p. 351, ch. 208, § 1.]

#### Art. 8307b. Presumptions on Appeal From Board; Denial by Verified Pleadings

In the trial of any case appealed to the court from the board the following, if plead, shall be presumed to be true as plead and have been done and filed in legal time and manner, unless denied by verified pleadings:

- (1) Notice of injury;
- (2) Claim for compensation;
- (3) Award of the board;
- (4) Notice of intention not to abide by the award of the board;
- (5) Filing of suit to set aside the award.

Such denial may be made in original or amended pleadings; but if in amended pleadings such must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them must be proved.

[Acts 1937, 45th Leg., p. 535, ch. 261.]

#### Art. 8307c. Protection of Claimants From Discrimination by Employers; Remedies; Jurisdiction

Sec. 1. No person may discharge or in any other manner discriminate against any employee because the employee has in good faith filed a claim, hired a lawyer to represent him in a claim, instituted, or caused to be instituted, in good faith, any proceeding under the Texas Workmen's Compensation Act, or has testified or is about to testify in any such proceeding.

Sec. 2. A person who violates any provision of Section 1 of this Act shall be liable for rea-

sonable damages suffered by an employee as a result of the violation, and an employee discharged in violation of the Act shall be entitled to be reinstated to his former position. The burden of proof shall be upon the employee.

Sec. 3. The district courts of the State of Texas shall have jurisdiction, for cause shown, to restrain violations of this Act.

[Acts 1971, 62nd Leg., p. 884, ch. 115, Aug. 30, 1971.]

PART 3

Art. 8308. Employers' Insurance Association

Creation

Sec. 1. The "Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this law and with all general corporate powers incident thereto.

Chiropractic Service Defined; Chiropractor Defined

Sec. 1A. The term "chiropractic service" shall include, but shall be limited to, chiropractic as defined by the Laws of this State and the term "chiropractor" shall include, but be limited to chiropractors licensed by the Texas Board of Chiropractic Examiners whose licenses are properly registered and in good standing as required by the Laws of this State.

Board of Directors

Sec. 2. The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide. At any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting.

Powers of Directors

Sec. 3. Until the first meeting of the subscribers, the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this law, which shall be in effect until amended or repealed by the subscribers.

Officers

Sec. 4. The board of directors shall immediately choose by ballot a president, who shall be a member of the board, and shall elect a secretary, a treasurer, and such other officials as the by-laws may provide.

Quorum; Vacancies

Sec. 5. Seven or more directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide.

Executive Committee

Sec. 6. The board of directors may appoint an executive committee which may have and

exercise all of the powers of the board of directors except when the board is in session.

Subscribers

Sec. 7. Any employer of labor in this State who may be subject to the terms of this Law or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States<sup>1</sup> may become a subscriber to the Association.

<sup>1</sup> 33 U.S.C.A. §§ 901 to 950.

Votes

Sec. 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employés to whom the association is bound to pay compensation he shall be entitled to two votes and he shall be entitled to one additional vote for each additional 500 employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20 votes.

Minimum Number of Subscribers

Sec. 9. No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employés to whom the association may be bound to pay compensation.

List of Subscribers to be Filed

Sec. 10. No policies shall be issued by the association until a list of the subscribers with the number of employés of each, together with such information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner to issue policies.

Subscribers Falling Below Minimum

Sec. 11. If the number of subscribers falls below fifty, or the number of employés to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than fifty, who have not less than 2,000 employés to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section.

Investigation; License to Issue Policies

Sec. 12. Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Insurance shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

Distribution of Subscribers Into Groups

Sec. 13. The board of directors may distribute the subscribers into groups for the purpose

of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association, the funds of the association shall be deemed one and indivisible. The board of directors shall have power to re-arrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion.

#### Limit of Liability of Subscribers, Fixing

Sec. 14. The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium.

#### Assessments

Sec. 15. If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show a deficiency for the group, and second only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber.

#### Dividends

Sec. 16. The board of directors may, from time to time, by vote fix the amount to be paid as dividends to its subscribers, in such manner and under such plan as shall be determined by said directors in the exercise of their powers and discretion. No such dividend shall take effect until the same has been approved by the Board of Insurance Commissioners, and no such dividend shall be approved until adequate reserves have been provided by the Association, said reserves to be computed on the same basis as required for other classes of stock or mutual companies, reciprocals, inter-insurance exchanges, or Lloyds' associations under the laws of this State and applicable rules of the Board of Insurance Commissioners. Dividends and assessments may be fixed by and for groups, but the entire assets of the Association, including the liability of the subscriber to assessment within the limits fixed by the by-laws or by special agreement in writing as au-

thorized, shall be subject to the payment of any approved claim for compensation against the Association.

#### Surplus; Liability of Members Suspended

Sec. 16a. Whenever the Association shall have accumulated, at the end of any calendar year, an admitted surplus in excess of incurred losses, expenses and unearned premiums or other liabilities amounting to the sum of Two Hundred Thousand Dollars (\$200,000.00) or more, the liability of its members to assessment under Article 8308, Section 15, shall be suspended, and it shall be authorized to issue policies not subject to assessment. It shall be the duty of the Board of Insurance Commissioners to determine promptly after the filing of the annual Statement of the Association, whether or not such an amount of surplus exists and if it finds that it does, it shall so state in a certificate. Such certificate shall remain in full force and effect for one (1) year or until such time as a later report to or<sup>1</sup> examination by the Department of Insurance shall show the surplus to be less than Two Hundred Thousand (\$200,000.00) Dollars, whereupon the Board of Insurance Commissioners shall cancel and revoke such certificate and require the Association to issue policies subject to assessment under Article 8308, Section 15, as they were prior to the time when such surplus of Two Hundred Thousand (\$200,000.00) Dollars or more was first accumulated.

<sup>1</sup> So in enrolled bill. Session Laws insert "by" after the word "or."

Sec. 17. Repealed by Acts 1939, 46th Leg., p. 713.

#### Furnishing Workmen's Compensation Benefits to Additional Employees or Classifications of Employees by Purchasing Appropriate Insurance

Sec. 18. Any employer may assume with respect to any employee or classification of employees not within the coverage of this law, other than any such employee or classification of employees for whom a rule of liability or a method of compensation has been or may be established by the Congress of the United States, the liability for compensation imposed upon employers by this law with respect to employees within the coverage of this law, and the purchase and acceptance by such employer of valid workmen's compensation insurance applicable to such employee or classification of employees shall constitute as to such employer subscription to this law without any further act on the part of such employer, but only with respect to such employee or such classification of employees as is within the coverage of said workmen's compensation insurance, and such subscription shall take effect from the effective date of such workmen's compensation insurance and shall continue as long only as such employer remains a subscriber, and each such employee shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employ-

ment if he shall not have given his employer notice that he claimed such right, in accordance with the provisions of Article 8306, Section 3a. It is specifically provided, however, that under no circumstances shall the failure of any employer to assume with respect to any employee or classification of employees the liability for compensation and to purchase workmen's compensation insurance applicable to such employee or classification of employees, as made optional with the employer by this law, be construed as depriving such employer of the common law defenses listed in Section 1 of Article 8306, Revised Civil Statutes of the State of Texas.

Information to be Furnished When Employer Becomes Subscriber; Filing Fee; Failure to Comply; Notice; Penalty

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he or the insurance company shall immediately notify the Board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employees, estimated amount of his payroll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be immediately made known to the Board and the notice thereof shall contain the above facts. Such subscriber's notice shall be acknowledged by the insurance company. The Board is authorized and directed to collect a Seven Dollar and Fifty Cent (\$7.50) filing fee from the subscriber (including self-insurers) at the time of filing for each year of coverage or portion thereof on each legal entity on all policies including renewals and endorsements required to be filed with the Board in accordance with this Section. Said fee to be made payable to the Industrial Accident Board by the employer at the time of filing and shall not be an expense of the association nor considered in any premium rate making procedure. The association shall transmit said fee to the Board. The fees collected hereunder shall be allocated and disbursed according to the terms and provisions of Section 28, Article 8306, Revised Civil Statutes of Texas, The Workmen's Compensation Fund. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense. The Executive Director of the Board shall notify the Board of any willful failure or refusal to comply with this Section and after notice and hearing, the Board shall make a finding and if said finding is against the employer or association assess a penalty not to exceed one thousand dollars. The employer or association may appeal the Board's ruling de novo as provided in Section 5, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. The Board's ruling if adverse to the employer or association and not appealed as provided above shall be

enforced as provided in Section 5a, Article 8307, Revised Civil Statutes of Texas, 1925, as amended.

Notice by Subscriber to Persons Under Contract

Sec. 19. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association.

Notice by Subscriber of Insurance; Notice of Expiration

Sec. 20. Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this law. He shall file a copy of said notice with the board.

Payment of Judgment and Costs

Sec. 21. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any Judgment of a Court at Law, or by any Judgment of a Court of Equity or of admiralty and maritime jurisdiction to pay any employee any damages, actual or exemplary, on account of any personal injury sustained by any such employee in the course of his employment during the period of subscription the association shall pay to the subscriber the full amount of the Judgment and the costs assessed therewith, if the subscriber shall have given the Association notice of the bringing of the action upon which the Judgment was recovered and an opportunity to appear and defend the same in his or its name.

Failure to Issue Policies

Sec. 22. The corporate powers of the association shall not expire because of failure to issue policies or to make insurance.

Reserves

Sec. 23. The association shall set up and maintain reserves adequate to meet anticipated losses, carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and may be invested in such securities as are permitted to casualty companies organized under the General Laws; and, for the protection of its reserves and surpluses against the liability herein imposed, shall have the same right to reinsure or be reinsured as casualty companies organized under General Laws.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 359, ch. 241, § 1; Acts 1931, 42nd Leg., p. 203, ch. 119, § 1; Acts 1931, 42nd Leg., p. 289, ch. 170, §§ 1, 2; Acts 1939, 46th Leg., p. 713; Acts 1953, 53rd Leg., p. 55, ch. 44, § 1; Acts 1953, 53rd Leg., p. 493, ch. 178, § 6a; Acts 1953, 53rd Leg., p. 716, ch. 279, § 4; Acts 1967, 60th Leg., p. 206, ch. 118, § 1, eff. May 4, 1967; Acts 1967, 60th Leg., p. 1812, ch. 695, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1775, ch. 515, § 1, eff. July 1, 1971; Acts 1973, 63rd Leg., p. 200, ch. 88, § 19, eff. Sept. 1, 1973.]

Acts 1967, 60th Leg., p. 1812, ch. 695, which amended this article by adding section 18 thereto, provided in sections 2 and 3 thereof:

"Sec. 2. In the event that any of the provisions of this Act are in conflict with the provisions of any other law, the provisions hereof shall take precedent and shall prevail to the extent of such conflict.

"Sec. 3. If the provisions of this Act or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 to 4 of the 1971 amendatory act provided:

"Sec. 2. This Act shall be effective July 1, 1971.

"Sec. 3. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 4. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict."

## PART 4

### Art. 8309. Definitions and General Provisions

#### Words and Phrases Defined

Sec. 1. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employee" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer; provided that an employee who is employed in the usual course of the trade, business, profession or occupation of an employer and who is temporarily directed or instructed by his employer to perform service outside of the usual course of trade, business, profession or occupation of his employer is also an employee while performing such services pursuant to such instructions or directions; provided further, that such persons, other than independent contractors and their employees, as may be engaged in the work of the employer of enlargement, construction, remodeling or repairing of the premises or buildings used or to be used in the conduct of the business of the employer shall be deemed employees; and provided further, that any person, who may be performing or doing work or service that may be otherwise legally performed or done,

shall be deemed an employee as herein defined and shall be entitled to receive compensation under the terms and provisions of this Act despite the fact that such person may not have secured a license, permit or certificate to perform or do such work or service as may be required by any Statute or municipal ordinance, or despite the fact that such person may have been performing or doing such work or service in violation of any wage law, hour law or Sunday law. Provided that this Section shall not be construed to relieve from fine or imprisonment any person, firm or corporation employing or performing any work or services prohibited by any Statute of this state or any valid municipal ordinance.

The words "legal beneficiaries" as used in this Act shall mean the relatives named in Section 8a, Part 1, of this Act.<sup>1</sup>

"Association" shall mean the "Texas Employers' Insurance Association" or other insurance company authorized under this Act to insure the payment of compensation to injured employees or to the beneficiaries of deceased employees.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in Section 12, Part 3, of this Act.<sup>2</sup>

"Average weekly wages" shall mean:

(1) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which he shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(2) If the injured employee shall not have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which an employee of the same class, working at least two hundred ten (210) days of such immediately preceding year, in the same or in a similar employment, in the same or a neighboring place, shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(3) When by reason of the shortness of the time of the employment of the employee, or other employee engaged in the same class of work in the manner and for

the length of time specified in the above Subsections 1 and 2, or other good and sufficient reasons, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Board in any manner which may seem just and fair to both parties, as of the date of injury.

(4) Said wages shall include the market value of board, lodging, laundry, fuel and other advantage which can be estimated in money which the employee receives from the employer as a part of his remuneration.

The term "injury sustained in the course of employment," as used in this Act, shall not include:

(1) An injury caused by an act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from an act of God responsible for the injury than ordinarily applies to the general public.

(2) An injury caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee, or because of his employment.

(3) An injury received while in a state of intoxication.

(4) An injury caused by the employee's wilful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. The word "board" whenever used in this Act shall be held to mean the Industrial Accident Board created by this Act. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

<sup>1</sup> Article 8306, § 8a.

<sup>2</sup> Article 8308, § 12.

#### Individuals Covered by Subscriber

Sec. 1a. Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a partner, a sole proprietor, or a corporate executive officer, except an officer of a state educational institution. The insurance contract shall specifically include the partner, sole proprietor, or corporate executive

officer; and the elected coverage shall continue while the policy is in effect and while the named individual is employed by a subscriber.

#### Transportation or Travel as Basis for Claim for Injury

Sec. 1b. Unless transportation is furnished as a part of the contract of employment or is paid for by the employer, or unless the means of such transportation are under the control of the employer, or unless the employee is directed in his employment to proceed from one place to another place, such transportation shall not be the basis for a claim that an injury occurring during the course of such transportation is sustained in the course of employment. Travel by an employee in the furtherance of the affairs or business of his employer shall not be the basis for a claim that an injury occurring during the course of such travel is sustained in the course of employment, if said travel is also in furtherance of personal or private affairs of the employee, unless the trip to the place of occurrence of said injury would have been made even had there been no personal or private affairs of the employee to be furthered by said trip, and unless said trip would not have been made had there been no affairs or business of the employer to be furthered by said trip.

#### Insurance Companies May Insure

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State, shall have the same right to insure the liability and pay the compensation provided for in Part I of this law, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II and IV<sup>1</sup> and of Sections 10, 17, 18a and 21 of Part III of this law.<sup>2</sup> Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty (50) subscribers who have not less than two thousand (2,000) employees. Nothing contained in this or any other law shall require an insurance company or the association to issue a policy to any applicant applying for coverage under this law, except as provided in Article 5.76 of the Insurance Code of Texas.

<sup>1</sup> This article and articles 8306, 8307.

<sup>2</sup> Article 8308, §§ 10, 17, 18a, 21.

#### Termination of Status as Subscriber

Sec. 3. Any subscriber who has paid a premium as provided in section 1, part 4, of this law may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employees, in such manner as may be required

by the board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance as to the minimum premiums or short rate cancellation.

#### Liability for Misrepresentation of Pay Roll

Sec. 3a. Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this law is to be based shall be liable to the association insuring the compensation of his employes in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced by suit therefor.

#### Effect of Amendments on Existing Right, Remedies, Etc.

Sec. 3b. No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employee or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this law in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. The maximum weekly benefit and the total amount payable in effect upon the date of injury shall remain the applicable maximum weekly benefit and total amount payable for the injury or death regardless of the increase of any benefits that shall take effect at any later date.

#### Advance Payments of Compensation

Sec. 4. (a) In cases of emergency or impending necessity the association may make advanced payments of compensation to any employee during the period of his incapacity or to his beneficiaries within the terms of this law, and when the same is either directed or approved by the Board it shall be credited as against any unaccrued compensation due said employee or beneficiaries.

(b) In the event the association does not initiate payments of compensation, the employer may for the purpose of this Section voluntarily initiate weekly payments as they accrue to the employee in the amount desired and may continue said weekly payments as they accrue for a period not to exceed ten (10) weeks or until the settlement is approved or the award made by the Board, whichever occurs first. The em-

ployer shall notify the Board and association on forms supplied by the Board of the date of the initiation of such payments and the weekly amount thereof. At the time of any settlement, award or judgment for compensation, such payment previously made by the employer in a sum not to exceed the weekly benefit amount under this Act received by the employee multiplied by the number of weeks, including fractions thereof, for which payments were made and not to exceed ten (10) weeks, during which the employee earned no wages from the employer, shall be construed as employer compensation under this law and such payments of employer compensation shall be paid by the association directly to the employer. Such employer payments of employer compensation shall not be construed as an admission of liability. The payments of employer compensation provided for herein shall in no way affect the payment of benefits from any other source.

#### Reports of Accidents as Admissions and Evidence

Sec. 5. The reports of accidents required by this law to be made by subscribers shall not be deemed as admissions and evidence against the association or the subscriber in any proceedings before the board or elsewhere in a contested case where the facts set out therein or in any one of them is sought to be contradicted by the association or subscriber.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 537, ch. 262, § 1; Acts 1943, 48th Leg., p. 279, ch. 176, § 1; Acts 1953, 53rd Leg., p. 716, ch. 279, § 3; Acts 1957, 55th Leg., p. 1186, ch. 397, § 3; Acts 1959, 56th Leg., p. 778, ch. 335, § 1; Acts 1965, 59th Leg., p. 1625, ch. 695, § 1; Acts 1967, 60th Leg., p. 426, ch. 192, § 1, eff. May 15, 1967; Acts 1969, 61st Leg., p. 48, ch. 18, § 11, eff. May 18, 1969; Acts 1973, 63rd Leg., p. 194, ch. 88, § 11, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 201, ch. 88, § 20, eff. Sept. 1, 1973.]

#### Art. 8309a. Hearing of Claim by Industrial Accident Board; Postponement of Hearing

When an injured employee of a subscriber under the Workmen's Compensation Act has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Industrial Accident Board shall hear his claim for compensation within a reasonable time.

Provided, however, the Industrial Accident Board may, in its discretion, delay or postpone the hearing of such claim under the following circumstances and no appeal shall be taken from any such order of the Board:

(a) When such injured employee is being paid compensation as provided in the Workmen's Compensation Act, and the Insurance Association is furnishing either hospitalization, chiropractic service or medical treatment to such employee.

(b) When the parties have failed to file all written medical reports that are available from a duly licensed physician or chiropractor covering the injury after being directed to do so in writing by the Board.

[Acts 1931, 42nd Leg., p. 304, ch. 179, § 1; Acts 1953, 53rd Leg., p. 493, ch. 178, § 7; Acts 1969, 61st Leg., p. 48, ch. 18, § 12, eff. May 18, 1969.]

## Art. 8309b. Texas A & M University Employees

Laws Passed Pursuant to Const. Art. 3, § 59

Sec. 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

### Definitions

Sec. 2. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Directors of the Agricultural and Mechanical College of Texas including the following:

Agricultural and Mechanical College of Texas<sup>1</sup>

Texas Agricultural Experiment Station

Extension Service, A. and M. College of Texas<sup>1</sup>

Texas Forest Service

Rodent Control Service

Firemen's Training School

John Tarleton Agricultural College<sup>2</sup>

North Texas Agricultural College

Prairie View State Normal and Industrial College<sup>3</sup>

Any other agencies now or hereafter under the direction and control of said Board of Directors.

2. "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Repealed by Acts 1949, 51st Leg., p. 840, ch. 457, § 2.

8. Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation

may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

<sup>1</sup> Name changed to Texas A & M University. See Education Code § 86.02.

<sup>2</sup> Name changed to Tarleton State University. See Education Code, § 87.001.

<sup>3</sup> Name changed to Prairie View A & M University. See Education Code, § 87.101.

### Group Life and Accident Insurance

Sec. 3. After the effective date of this Act the Board of Directors of the Agricultural and Mechanical College of Texas<sup>1</sup> is hereby authorized to require, as a condition of employment, all employees, except those persons who are paid on a piece-work basis, or on any basis other than by the hour, day, week, month, or year, to acquire protection under a group life and accident insurance plan approved by it.

After the effective date any workman, as defined in this Act, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The institution is hereby authorized to be self-insuring and is charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of pay roll.

The institution shall give notice to all workmen that, effective at the time stated in such notice, the institution has provided for payment of insurance.

### Compensation for Injury in Course of Employment

Sec. 4. If a workman of the institution sustains an injury in the course of his employment, he shall be paid compensation by the institution as herein provided except that compensation for any person employed on less than a full work-day basis shall not exceed sixty per cent (60%) of his average weekly earning.

### Actions; Defenses

Sec. 5. If<sup>1</sup> an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

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

### Exclusiveness of Remedy; Exemption of Compensation From Legal Process; Assignability

Sec. 6. Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants or employees of the institution for injuries resulting

in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

#### Laws Governing

Sec. 7. Unless otherwise provided herein, Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended, are hereby adopted and shall govern insofar as applicable under the provisions of this law. Provided that whenever in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, as amended, or herein amended, the word "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the institution."

#### Attorney's Fees

Sec. 8. Repealed by Acts 1969, 61st Leg., p. 586, ch. 199, § 3, eff. May 14, 1969.

#### Payment of Compensation; Exhaustion of Earned Annual and Sick Leave

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time the services provided in Section 7, Article 8306, as amended, will remain available to the workman but no workmen's compensation payment will accrue or become due and payable to the injured workman.

#### Examination by Physicians or Chiropractors; Process and Procedure

Sec. 10. The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians, chiropractor or chiropractors, authorized to practice under the Laws of this State. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians, a chi-

ropractor or chiropractors of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment, chiropractic, or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the institution to reduce or suspend the compensation of any such injured workman. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians, a chiropractor or chiropractors of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege to have a physician or chiropractor of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician or chiropractor selected by the workman, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act.

#### Decisions of Board; Suits; Enforcement of Award

Sec. 11. All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of

such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may, after demanding compliance, bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full

amount thereof, together with twelve per cent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

#### Record of Injuries; Reports

Sec. 12. The institution shall hereafter keep a record of all injuries fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institution shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this Section.

#### Rules and Regulations; Physicians or Chiropractors for Examinations; Reports of Examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

#### Physical Examination Necessary to be Certified as Workman; Exception

Sec. 14. Except as provided in Section 15, no person shall be certified as a workman in

the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician, surgeon, or chiropractor, to be physically fit to perform the duties and services to which he is to be assigned.

**Certification as Workman of Person Failing to Pass  
Physical Examination; Waiver of Insur-  
ance Coverage**

Sec. 15. In the discretion of the institution, any person failing to pass a physical examination as provided in Section 14 may be certified as a workman on the condition that such person shall execute in writing, prior to his employment, or continued employment if such person is already employed by the institution upon the effective date hereof, a waiver of coverage under the provisions of this Act. Such waiver shall be valid and binding on the workman so executing it and in the event of injury or death of the workman suffered in the course of his employment no compensation or death benefits shall be paid to him or his beneficiaries.

**Certified Copies of Orders, Awards and Decisions**

Sec. 16. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

**Suit to Set Aside Final Decision**

Sec. 17. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

**Hearing of Claim**

Sec. 18. When an injured workman has sustained an injury in the course of his employment, and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time; provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization, medical treatment, or chiropractic care to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

**Amounts to be Set Aside for Awards and Expenses**

Sec. 19. The institutions covered by this Act are hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed two per cent (2%) of the annual workman pay roll of the institution for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which account shall show the disbursements authorized by this Act; provided the amounts so set aside in this account shall not exceed two per cent (2%) of the annual workman pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

**Attorney General as Legal Representative**

Sec. 20. The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

**Notice by Clerk on Appeal**

Sec. 21. In every case appealed from the Board to any District or County Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon District and County Clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a District or County Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a District or County Court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

Partial Invalidity

Sec. 22. If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect.

[Acts 1931, 42nd Leg., p. 308, ch. 182; Acts 1947, 50th Leg., p. 417, ch. 229; Acts 1949, 51st Leg., p. 840, ch. 457, §§ 1 to 4; Acts 1953, 53rd Leg., p. 493, ch. 178, §§ 8 to 11a; Acts 1957, 55th Leg., p. 460, ch. 222, §§ 1 to 4; Acts 1959, 56th Leg., p. 644, ch. 297, § 1; Acts 1969, 61st Leg., p. 586, ch. 199, §§ 1, 3, eff. May 14, 1969; Acts 1973, 63rd Leg., p. 194, ch. 88, § 12, eff. Sept. 1, 1973.]

Arts. 8309c, 8309c-1. Repealed by Acts 1973, 63rd Leg., p. 200, ch. 88, § 18, eff. July 1, 1974

Former article 8309c, relating to workmen's compensation for county employees, was derived from:

- Acts 1949, 51st Leg., p. 797, ch. 428.
- Acts 1953, 53rd Leg., p. 493, ch. 178, §§ 12 to 14.
- Acts 1957, 55th Leg., p. 535, ch. 251, § 1.
- Acts 1969, 61st Leg., p. 2303, ch. 778, §§ 1, 2.
- Acts 1971, 62nd Leg., p. 2795, ch. 904, § 1.

Former article 8309c-1, extending workmen's compensation insurance to employees of certain drainage districts, was derived from Acts 1967, 60th Leg., p. 1843, ch. 176 and Acts 1971, 62nd Leg., p. 2538, ch. 833, § 1.

See, now, article 8309h.

Art. 8309d. University of Texas System Employees

Law Passed Pursuant to Constitution

Sec. 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Definitions

Sec. 2. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas including the following:

- Main University, Austin
- Medical Branch, Galveston
- Dental Branch, Houston
- M. D. Anderson Hospital for Cancer Research, Houston
- Southwestern Medical School, Dallas

Texas Western College, El Paso  
Postgraduate School of Medicine,  
Houston

Any other agencies now or hereafter under the direction and control of said Board of Regents.

2. "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Group Insurance of Employees Other Than Workmen;  
Compensation for Workmen; Acceptance  
of Provisions

Sec. 3. After the effective date of this Act the Board of Regents of The University of Texas is hereby authorized to require, as a condition of employment, all employees except workmen as defined above, to acquire protection under a group life and accident insurance plan approved by it.

After the effective date, any workman, as defined in this Act, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The institution is hereby authorized to be self-insuring and is charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of payroll.

The institution shall give notice to all workmen that, effective at the time stated in such notice, the institution has provided for payment of insurance.

Workmen of the institution shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

**Compensation for Injury in Course of Employment**

Sec. 4. If a workman of the institution sustains an injury in the course of his employment, he shall be paid compensation by the institution as herein provided except that compensation for any person employed on less than a full work-day basis shall not exceed sixty per cent (60%) of his average weekly earning.

**Defenses**

Sec. 5. In an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

**Exclusiveness of Remedy; Exemptions and Non-Assignability**

Sec. 6. Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries, nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants or employees of the institution for injuries resulting in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

**Applicability of Existing Laws**

Sec. 7. The following sections are adopted and shall govern as applicable under the provisions of this Act: Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925; as amended, and as may be hereafter amended; Section 1, Chapter 248, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes), as last amended by Section 2, Chapter 26, Acts of the 54th Legislature, Regular Session, 1955, and as may be hereafter amended; Sections 4a, 6a, 10, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Sections 4 and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953, and as may be hereafter amended.

Wherever the words "association," "subscriber," or "employer," or the equivalent of any of these words, are used in Article 8306, 8307, or 8309, Revised Civil Statutes of Texas, as amended, or as may be hereafter amended, and in Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953, and as may be hereafter amended, for the purpose of this Act they mean "the institution."

**Attorney's Fees**

Sec. 8. Repealed by Acts 1969, 61st Leg., p. 2311, ch. 781, § 3, eff. June 14, 1969.

**Weekly Payments; Annual and Sick Leave**

Sec. 9. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time the services in Section 7, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended, will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

**Medical Examinations; Insanitary or Injurious Practices; Process and Procedure**

Sec. 10. The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the Laws of this State. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the institution to reduce or suspend the compensation of any such injured workman. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician selected by the workman, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act.

**Board to Determine Questions; Suits to Set Aside or Enforce Rulings; Failure to Make Payments**

Sec. 11. All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by the said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such no-

tice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may, after demanding compliance, bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

**Records and Reports**

Sec. 12. The institution shall hereafter keep a record of all injuries fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institu-

tion shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this Section.

**Rules and Regulations; Designation of Physicians and Surgeons; Reports of Examinations**

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

**Physical Examination Before Certification**

Sec. 14. Repealed by Acts 1973, 63rd Leg., p. 200, ch. 88, § 18, eff. July 1, 1974.

**Waiver of Rights**

Sec. 15. An agreement to waive his rights under this Act made in writing by any workman prior to his employment shall be valid.

**Evidence; Certified Copies**

Sec. 16. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the Act of said Board in any Court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to

any person in said Board for making such copies in excess of the fees charged for such copies.

**Venue of Suits; Transfer to Proper County**

Sec. 17. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

**Time for Hearing**

Sec. 18. When an injured workman has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

**Setting Aside Funds; Account; Reports**

Sec. 19. The institutions covered by this Act are hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed two per cent (2%) of the annual workman payroll of the institution for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which account shall show the disbursements authorized by this act; provided the amounts so set aside in this account shall not exceed two per cent (2%) of the annual workman payroll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

**Legal Representative**

Sec. 20. The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

Duties of Clerk of Court and Attorneys

Sec. 21. That in every case appealed from the Board to any District or County Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon District and County Clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a District or County Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a District or County Court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

Partial Unconstitutionality

Sec. 22. If any section, sentence, clause or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses or parts thereof be declared unconstitutional.

[Acts 1931, 42nd Leg., p. 308, ch. 182; Acts 1951, 52nd Leg., p. 522, ch. 310; Acts 1959, 56th Leg., p. 703, ch. 323, § 1; Acts 1969, 61st Leg., p. 2311, ch. 781, §§ 1 to 3, eff. June 14, 1969; Acts 1973, 63rd Leg., p. 195, ch. 88, § 13, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 200, ch. 88, § 18, eff. July 1, 1974.]

Acts 1969, 61st Leg., p. 2311, ch. 781, §§ 4, 5 provided: "Sec. 4. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the institution, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, the original law is not repealed, but remains in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 8309e. Repealed by Acts 1969, 61st Leg., 2nd C.S., p. 149, ch. 22, § 15, eff. Sept. 19, 1969

Former article 8309e, relating to workmen's compensation for municipal employees, was derived from Acts 1953,

53rd Leg., p. 805, ch. 327 and Acts 1955, 54th Leg., p. 466, ch. 131, §§ 1 to 3.  
See, now, article 8309h.

Arts. 8309e-1, 8309e-2. Repealed by Acts 1973, 63rd Leg., p. 200, ch. 88, § 18, eff. July 1, 1974

Repealed article 8309e-1, extending workmen's compensation to employees of independent school districts, was derived from Acts 1965, 59th Leg., p. 1006, ch. 493 and Acts 1967, 60th Leg., p. 263, ch. 128, § 1.

Former article 8309e-2, relating to workmen's compensation for municipal employees, was derived from Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 22.  
See, now, article 8309h.

Art. 8309f. Texas Tech University Employees  
Constitutional Authority

Sec. 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for workmen's compensation insurance for state employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Definitions

Sec. 2. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean the institution and agency under the direction or government of the Board of Regents of Texas Tech University including the following:

Texas Tech University, Lubbock;  
Pan Tech Farm, Carson County, Texas;

Texas Tech University School of Medicine at Lubbock;

Any other agencies now or hereafter under the direction and control of said Board of Regents.

2. "Workman" shall mean every person in the service of Texas Tech University under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the university.

Authority of Institution; Notice

Sec. 3. The institution is hereby authorized to either be self-insuring or to purchase Workmen's Compensation Insurance for their employees from a company authorized to do business in the State of Texas, and who shall be charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of payroll.

Compensation for Injury in Course of Employment

Sec. 4. If a workman of the institution sustains an injury in the course of his employ-

ment, he shall be paid compensation by the institution as herein provided except that compensation for any person employed on less than a full work-day basis shall not exceed sixty per cent (60%) of his average weekly earning.

#### Actions; Defenses

Sec. 5. In an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

#### Exclusiveness of Remedy; Exemption of Compensation From Legal Process; Assignability

Sec. 6. Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries, nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants or employees of the institution for injuries resulting in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

#### Laws Governing

Sec. 7. Unless otherwise provided herein, Sections 1, 6, 7, 7b, 7c, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended or as they may hereafter be amended; Chapter 248, Acts of the 42nd Legislature, Regular Session, 1931 (compiled as Article 8306a of Vernon's Texas Civil Statutes), as amended or as it may hereafter be amended; Sections 4a, 6a, 11, 12, 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended or as they may hereafter be amended; and Sections 4 and 5 of Article 8309, Revised Civil Statutes of Texas, 1925, as amended or as they may hereafter be amended, are adopted and shall govern where applicable. However, when in the above adopted Sections of Articles 8306, 8307 and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association," "subscriber," "employer" or their equivalent appear, they shall mean "the institution."

#### Attorney's Fees

Sec. 8. For representing the interest of any claimant in any matter carried from the Board into the courts, it shall be lawful for the attorney representing such interest to contract with

any beneficiary under this Act for an attorney's fee for such representation, such fee to be determined as herein provided and, when the amount recovered exceeds the amount of the award appealed from, to include not more than one-third ( $\frac{1}{3}$ ) of the amount by which the judgment exceeds the award, such fee for services so rendered to be determined and allowed by the trial court in which such causes may be heard and determined.

#### Payment of Compensation

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

#### Examination by Physician; Process and Procedure

Sec. 10. The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the state, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the laws of this state. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the state, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the institution to reduce or suspend the compensation of any such injured workman. No compensation shall be reduced or suspended under the terms of this section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege of having a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician selected by the workman, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have the power to subpoena witnesses, administer oaths, inquire into matters of fact, and examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accordance with the provisions of this Act.

Decisions of Board; Suits to Set Aside Decisions; Suit on Order, Ruling or Decision; Suit to Collect Award

Sec. 11. All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after rendition of said final ruling and decision by the said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said section may, after demanding compliance, bring suit in a court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Record of Injuries; Reports

Sec. 12. The institution shall hereafter keep a record of all injuries, fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institution shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this section.

Rules and Regulations; Designation of Physicians and Surgeons; Reports of Examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

Physical Examination Before Certification

Sec. 14. No person shall be certified as a workman of the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned; provided that absence of a physical examination shall not be a bar to recovery.

Waiver of Rights

Sec. 15. An agreement to waive his rights under this Act made in writing by any workman prior to his employment shall be valid.

Orders, Awards or Proceeding as Evidence; Certified Copies; Fees

Sec. 16. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any court of this state.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General

Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

Venue of Suits; Transfer to Proper County

Sec. 17. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

Time for Hearing of Claim

Sec. 18. When an injured workman has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

Amounts to be Set Aside for Awards and Expenses; Accounts; Reports

Sec. 19. The institution covered by this Act is hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed three and one-half percent (3½%) of the annual workman payroll of the institution for the payment of all costs, administrative expense, charges, benefits, insurance, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which account shall show the disbursements authorized by this Act; provided the amounts so set aside in this account shall not exceed three and one-half percent (3½%) of the annual workman payroll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature and required by the statutes.

## Legal Representative of Institution

Sec. 20. The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

## Appeals; Notice; Duties of Clerk of Court and Attorneys

Sec. 21. In every case appealed from the Board to any District or County Court, the clerk of such court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon district and county clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the clerk of the court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the clerk of a district or county court to mail a certified copy of such judgment to the Board as above provided.

Any clerk of a district or county court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250.00).

## Option of Institution as to Appropriations

Sec. 22. The institution covered by this Act shall have an option to set aside available appropriations, depending on the availability of such appropriations, as approved by the Legislature. Under no circumstances shall the institution be obligated to execute this Act should it jeopardize its existing financial operations.

## Partial Invalidity

Sec. 23. If any section, sentence, clause or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses or parts thereof be declared unconstitutional.

[Acts 1931, 42nd Leg., p. 308, ch. 182; Acts 1957, 55th Leg., p. 536, ch. 252; Acts 1963, 58th Leg., p. 491, ch. 178, § 1; Acts 1971, 62nd Leg., p. 84, ch. 47, §§ 1, 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 195, ch. 88, § 14, eff. Sept. 1, 1973.]

## Art. 8309g. Workmen's Compensation Insurance for State Employees

## Definitions

Sec. 1. In this article:

(1) "Employee" means a person in the service of the state under an appointment

or express contract of hire, oral or written, whose compensation is paid by warrant issued by the Comptroller, except a person employed by the State Highway Department or by an institution of higher education subject to a separate workman's compensation law.

(2) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended.

(3) "Board" means the Industrial Accident Board.

(4) "Division" means the State Employees Division of the Attorney General's Office.

(5) "Director" means the director of the State Employees Division.

## State Self-insuring

Sec. 2. With respect to injuries sustained by employees in the course of their employment, the state is self-insuring.

## State Employees Division; Director

Sec. 3. The Attorney General shall establish a state employees division within his office to administer this article. He shall appoint a director to act as the chief executive and administrative officer of the division, and shall provide him with office space and sufficient personnel to administer this article. The director shall administer this article with money appropriated by the legislature.

## Director's Standing as Employer and Insurer

Sec. 4. In administering and enforcing this article, the director shall act in the capacity of employer and insurer. He shall act as an adversary before the board and courts, presenting the legal defenses and positions of the state as an employer and insurer. For these purposes he is entitled to the legal counsel of the Attorney General of the State of Texas.

## Procedural Rules

Sec. 5. The director shall make procedural rules and prescribe forms necessary to the effective administration of this article.

## Rules for Accident Prevention

Sec. 6. The director shall make and enforce reasonable rules for the prevention of accidents and injuries. He shall hold hearings on all proposed rules under this section and afford reasonable opportunity for officers of the departments, boards, commissions, and agencies of the state to testify.

## Distribution of Copies of Rules

Sec. 7. The director shall furnish copies of all rules to the board and to the administrative heads of all departments, boards, commissions, and agencies affected by this article.

## Records and Reports of Injuries

Sec. 8. The director shall keep a record of all injuries sustained by employees in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, the director shall make a written report to the board on a form provided by the board. He shall submit a supplemental report within 10 days after the termination of the incapacity of the employee. If the incapacity extends beyond a period of 60 days, he shall submit a supplemental report before the 70th day. The director shall make other reports as required by the board.

## Reports to Legislature

Sec. 9. The director shall make a report to the legislature at the beginning of each regular session. The report shall be dated January 1 and shall include the following:

(1) a list of all recipients of benefits under this article, the nature and causes of their injuries, and the amounts paid in weekly compensation and for medical, hospital, and other services;

(2) a summary of administrative expenses;

(3) a statement showing how much of the money appropriated by the preceding legislature remains unexpended as of January 1, and estimating how much of this balance will be needed to administer this article for the remainder of the fiscal year;

(4) an estimate, based on experience factors, of the amount of money which will be required to administer this article and pay for the compensation and services provided by this article during the next succeeding biennium.

## Director Subject to Actions of Board

Sec. 10. The director is subject to the regulations, orders, and decisions of the board in the same manner as private employers, insurers, and associations.

## Right to Compensation

Sec. 11. (a) If an employee sustains an injury in the course of his employment, he is entitled to compensation by the director as provided in this article.

(b) The director shall pay the compensation directly to the person entitled to it, from week to week and as it accrues, unless the liability is redeemed as provided in this article.

## Effect of Sick Leave

Sec. 12. (a) An employee is not entitled to weekly payments of compensation under this article until he has exhausted his accrued sick leave.

(b) The director has authority under Section 5 of this article to provide rules for the administration of this section.

## Beneficiaries of Deceased Employee

Sec. 13. The provisions of this article and the rules of the director affecting an employee also apply to the legal beneficiaries of a deceased employee.

## Notice by Clerk on Appeal

Sec. 14. (a) In every case appealed from the board to a district or county court, the clerk of the court shall within 20 days after the filing of the suit mail to the board a notice giving the style, number, and date of filing; and within 20 days after judgment is rendered in the suit, the clerk shall mail to the board a certified copy of the judgment. District and county clerks are not entitled to a fee for this service.

(b) The attorney preparing the judgment shall file the original and a copy with the clerk of the court. However, the failure of the attorney to comply with this requirement does not excuse the clerk of the court from the duty to mail a certified copy of the judgment to the board.

(c) Any clerk of a county or district court who fails to comply with this section is guilty of a misdemeanor, and on conviction he shall be punished by a fine of not more than \$250.

## Adoption of General Workmen's Compensation Laws

Sec. 15. (a) All laws adopted and made part of the workmen's compensation law applicable to the State Highway Department by Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes),<sup>1</sup> are adopted as part of this article to the extent that they are consistent with this article.

(b) Wherever the words "association," "insurer," "subscriber," or "employer" are used in the adopted laws, the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

<sup>1</sup> See article 6674s, § 7.

## Entitlement to Benefits

Sec. 16. An employee is not entitled to benefits under this article unless the accident causing his injury occurs at least 90 days after the effective date of this article.

[Acts 1973, 63rd Leg., p. 195, ch. 88, § 16.]

## Effective Date

*Section 21 of the 1973 Act provides, in part: " \* \* \* Section 16 [enacting this article] takes effect on the first day that money becomes available for its administration, pursuant to legislative appropriation \* \* \* "*

## Art. 8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions

## Definitions

Sec. 1. The following words and phrases as used in this article shall unless a different

meaning is plainly required by the context, have the following meanings, respectively:

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district, or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. No person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year shall be considered an employee and entitled to compensation under the terms of the provisions of this article.

(3) "Board" means the Industrial Accident Board.

Self-insurance; Effective Date; Notice to Board and Employees; Municipal Utilities

Sec. 2. (a) All political subdivisions of this state shall become either self-insurers, provide insurance under workmen's compensation insurance contracts or policies, or enter into interlocal agreements with other political subdivisions providing for self-insurance, extending workmen's compensation benefits to their employees.

(b) Subsection (a) of this section and Sections 1 and 4, Article 8306, Revised Civil Statutes of Texas, 1925, as amended or as may hereafter be amended, shall not apply to political subdivisions having an annual budget within the amounts indicated below, until the effective date shown for such budget bracket:

Budget Bracket	Effective Date
\$0 to \$250,000	June 30, 1977
\$250,001 to \$500,000	June 30, 1976
\$500,001 to \$750,000	June 30, 1975

(c) Each political subdivision shall notify the board stating the method by which their employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(d) Notice shall also be given to the employees of a political subdivision of the provision so made for benefits and the effective date thereof; and employees of a political subdivision shall be conclusively deemed to have accepted the compensation provisions in lieu of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries so received.

(e) In cities, towns, or villages in which a public utility or utilities is operated by a board of trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes of Texas, 1925, or any similar law, such board of trustees shall have all of the powers and authority of the governing body of the city with

reference to the adoption of a program of self-insurance under this article or in the taking out of a policy or policies of workmen's compensation insurance hereunder, and all funds set aside or expended for such purposes shall be considered operating expenses of the municipal utilities. All funds set aside or paid by such boards of trustees in connection with self-insurance or for premiums on policies of insurance shall be paid out of the revenues of the utilities operated by the board of trustees and neither the provisions for self-insurance nor the obligations incurred under insurance policies shall be general liabilities of the city, town, or village, but shall constitute only obligations payable out of the revenues. The boards of trustees shall be authorized to adopt all resolutions, give all notices and to do all things concerning workmen's compensation under this article with reference to employees employed by the boards of trustees which the governing body of the city, town, or village would be authorized to do with reference to other city employees, or groups of employees.

Adoption of General Workmen's Compensation Laws

Sec. 3. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1, 3, 3a, 3b, 4, 5, 6, 7, 7a, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12c-1, 12c-2, 12d, 12e, 12f, 12g, 12h, 12i, 13, 14, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended;

(2) Section 1, Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Sections 4a, 6a, 11, 12, 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended;

(4) Article 8307b, Revised Civil Statutes of Texas, 1925, as added by Section 2, Chapter 261, Acts of the 45th Legislature, Regular Session, 1937;

(5) Sections 1, 4 and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended; and

(6) Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953 (Article 8309a, Vernon's Texas Civil Statutes).

(b) Provided that whenever in the above adopted sections of Articles 8306, 8306a, 8307, 8307b, 8309 and 8309a of the Revised Civil Statutes of Texas, 1925, as amended the words "association," "subscriber," or "employer," or their equivalents appear in such articles, they shall be construed to and shall mean "a political subdivision."

Establishment of Joint Fund

Sec. 4. A joint fund, as herein provided for, may be established by the concurrence of

any two or more political subdivisions. The fund may be operated under the rules, regulations, and bylaws as established by the political subdivisions which desire to participate therein. Each political subdivision shall be and is hereby empowered to pay into said fund its proportionate part as due and to contract for the fund, by and through its directors, to make the payments due hereunder to the employees of the contracting political subdivision.

**Purpose**

Sec. 5. It is the purpose of this article that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

**Rules and Regulations; Forms**

Sec. 6. The political subdivision is authorized to promulgate and publish rules and regulations and to prescribe and furnish forms as may be necessary to the effective administration of this article, and the political subdivision shall have authority to make and enforce rules for the prevention of accidents and injuries as may be deemed necessary.

**Appropriations for Disbursements; Separate Account; Report**

Sec. 7. (a) The political subdivision is hereby authorized to set aside from available appropriations, other than itemized salary appropriations, an amount sufficient for the pay-

ment of all costs, administrative expenses, charges, benefits, insurance, attorney fees, and awards authorized by this article.

(b) The amount so set aside shall be set up in a separate account in the records of the political subdivision, which account shall show the disbursements authorized by this article. A statement of the amount set aside for the disbursements from the account shall be included in an annual report made to the political subdivision treasurer and the duly and legally constituted governing body of the political subdivision.

**Suits and Proceedings; Municipal Utilities**

Sec. 8. The political subdivision attorney, his assistants, or outside counsel may represent the political subdivision in the bringing of defense or suits and proceedings in connection with workmen's compensation benefits provided by the political subdivision as a self-insurer, except in cases where municipal utilities are operated by boards of trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes of Texas, 1925, and similar statutes, and in such instances the regularly employed attorneys or outside counsel for the boards of trustees shall represent the city in all cases and proceedings involving workmen's compensation for the employees employed under the jurisdiction of the boards of trustees and for whom benefits have been provided by the board of trustees on a self-insurer basis. [Acts 1973, 63rd Leg., p. 198, ch. 88, § 17, eff. July 1, 1974.]

## TITLE 131

### WRECKS [Repealed]

**CHAPTER ONE. WRECK-MASTERS  
[REPEALED]**

Arts. 8310 to 8318. Repealed by Acts 1953, 53rd Leg., p. 28, ch. 22, § 1

**CHAPTER TWO. COTTON SALVAGE  
[REPEALED]**

Arts. 8319 to 8324. Repealed by Acts 1953, 53rd Leg., p. 29, ch. 23, § 1

# TITLE 132

## OCCUPATIONAL AND BUSINESS REGULATION

Chapter	Article
1. Barbers .....	8401
2. Cosmetology .....	8451a
3. Boxing, Sparring, Wrestling, Etc. ....	8501-1
4. Gasoline and Petroleum Products .....	8601
5. Commodity Exchanges .....	8651
6 to 19. Reserved.	
20. Miscellaneous .....	9001

### CHAPTER ONE. BARBERS

Article
8401. Definitions.
8402. Registering Name and Location.
8403. Equipment.
8404. Employé With Disease.
8405. Cleanliness.
8406. No Place to Sleep.
8407. Penalty.
8407a. Texas Barber Law.

#### Art. 8401. Definitions

In this chapter, unless the context requires a different definition,

(1) "barbering" includes any of the following practices or combinations of practices when performed upon persons above the seventh cervical vertebra for cosmetic purposes and not for the treatment of disease or physical or mental illness or deformity, and when performed for the public:

- (A) shaving or trimming the beard;
- (B) cutting the hair;
- (C) any of the following treatments or combinations of treatments which are performed in the same place where (A) or (B) of this Section is practiced;
  - (i) giving facial or scalp massages;
  - (ii) Singeing, shampooing, dyeing, or tinting the hair;
  - (iii) applying cosmetic preparations, antiseptics, powders, oils, creams, clays, lotions, or tonics to the scalp, face, or neck; or
  - (iv) styling or processing the hair of males only.

None of the above described acts and practices shall constitute "barbering" within the provisions of this Act when performed upon females by persons engaged in the practice of hairdressing and cosmetology and who are licensed by the Texas State Board of Hairdressers and Cosmetologists.

(2) "barber" means a person who:

- (A) performs an act of barbering;

(B) professes to do barbering; or

(C) holds himself out to do barbering;

(3) "manager" means a person who controls or directs the business affairs of a barber shop or directs the work of a person employed in a barber shop or both;

(4) "barber shop" means a place where barbering is practiced except when said place is owned or operated in whole or in part by the State of Texas or any political subdivision thereof and except when said place is duly licensed as a barber school or college.

[1925 P.C.; Acts 1967, 60th Leg., p. 2018, ch. 746, § 1, eff. Aug. 28, 1967.]

#### Art. 8402. Registering Name and Location

Every person owning, operating or managing a barber shop or beauty parlor shall register his full name and the location of said shop or parlor in a book to be kept in the office of the State Board of Health for that purpose, and every owner, operator or manager of a barber shop or beauty parlor that is first opened for business hereafter shall within five days after the opening of such shop or parlor register in like manner. In event of a change in the manager or location of any such shop or parlor, the manager of same shall call at or communicate by mail with said board within five days after such change takes place and inform said board thereof.

[1925 P.C.]

#### Art. 8403. Equipment

The owner, operator or manager of any barber shop or beauty parlor shall equip and keep equipped the same with facilities and supplies and with all such appliances, furnishings and materials as may be necessary to enable persons employed in and about the same to comply with the law.

[1925 P.C.]

#### Art. 8404. Employé With Disease

No owner, operator or manager of a barber shop or a beauty parlor shall knowingly permit any person suffering from a communicable skin disease or from a venereal disease to act as a barber or employé or work or be employed in said shop or parlor. No person who to his own knowledge is suffering from a communicable disease or from venereal disease shall act as a barber or work or be employed in said shop or parlor.

[1925 P.C.]

**Art. 8405. Cleanliness**

Every person in charge of a barber shop or beauty parlor shall keep said shop or parlor and all furniture, tools, appliances and other equipment used therein at all times in a cleanly condition, and shall cause all combs, hair brushes, hair dusters and similar articles used therein to be washed thoroughly at least once a day and to be kept clean at all times, and shall cause all mugs, shaving brushes, razors, shears, scissors, clippers and tweezers used therein to be sterilized at least once after each time used as hereinafter provided. The term "persons affected by this chapter" shall include any person working or employed in a barber shop or beauty parlor or acting as a barber, beauty specialist or manicurist. Every barber or other person affected by this chapter, immediately after using a mug, shaving brush, razor, scissors, shears, clippers, or tweezers, for the service of any person, shall sterilize the same by immersing it in boiling water for not less than a minute, or in the case of a razor, scissors, shears or tweezers, by immersing it for not less than ten minutes in a five per cent aqueous solution of carbolic acid. No barber or other person affected by this chapter shall:

1. Use for the service of any customer a comb, hair brush, hair duster or any similar article that is not thoroughly clean, nor any mug, shaving brush, razor, shears, scissors, clippers, or tweezers, that are not thoroughly clean or that have not been sterilized since last used.
2. Serve any customer unless he shall immediately before such service cleanse his hands thoroughly.
3. Use for the service of a customer any towel or wash cloth that has not been boiled and laundered since last used.
4. To stop the flow of blood use the same piece of alum or other material for more than one person.
5. Shave any person when the surface to be shaved is inflamed or broken out or contains pus, unless such person be provided with a cup, razor and lather brush for his individual use.
6. Permit any person to use the head rest of any barber's chair under his control until after the head rest has been covered with a towel that has been washed and boiled since having been used before, or by clean new paper or similar clean substance.
7. Use a powder puff or a sponge in the service of a customer unless it has been sterilized since last used.
8. Use a finger bowl unless it has been sterilized since last used and fresh water or other liquid placed therein.

[1925 P.C.]

**Art. 8406. No Place to Sleep**

No owner or manager of any barber shop or beauty parlor shall permit any person to sleep in any room used wholly or in part as such shop or parlor, and no person shall pursue the barber business or be employed in a barber shop or beauty parlor in any room used as a sleeping apartment.

[1925 P.C.]

**Art. 8407. Penalty**

Whoever violates any provision of this chapter or fails or refuses to comply with any provision thereof shall be fined not to exceed one hundred dollars.

[1925 P.C.]

**Art. 8407a. Texas Barber Law****Registration Required**

Sec. 1. It shall be unlawful for any person to engage in the practice or attempt to practice barbering in the State of Texas without a certificate or registration as a registered barber issued pursuant to the provisions of this Act, by the Board of Barber Examiners hereinafter created.

**Registered Assistant Barber**

Sec. 2. It shall be unlawful for any person to serve or attempt to serve as an assistant barber under a registered barber within the State of Texas without a certificate of registration as a registered assistant barber, issued by the Board herein provided for.

Barber Shop Permit; Application; Inspection; Display; Transfer; Renewal; Supervision

Sec. 3. (A) No person may own, operate, or manage a barber shop without a barber shop permit issued by the board.

(B) Any firm, corporation or person who opens a new barber shop shall within three (3) days submit an application in writing to the Board of Barber Examiners for a temporary barber shop permit together with an inspection fee of one (\$1.00) dollar. The applicant must place in his application the permanent address of his shop.

(C) The board must issue a barber shop permit to any applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the State Department of Public Health.

(D) A barber shop permit must be displayed in a conspicuous place in the barber shop for which the permit is issued.

(E) A permit shall not be issued to any barber shop which is not complying with the sanitary rules and regulations promulgated pursuant to Section 28 of this Act, and Title 12, Chapter 4 of the Penal Code,<sup>1</sup> or for any shop employing a barber who is not complying with the Provisions of this Act.

(F) Permits are not transferable to another person. If the ownership of a barber shop is transferred to another person, the shop may continue in operation if the new owner applies for and obtains a new permit not more than 30 days after the transfer of ownership. Provided, however, a permit is transferable from the permittee to any member of his immediate family, who may or may not be a licensed barber, who wants to continue to operate said shop as a family proprietorship.

(G) To continue operating a barber shop, a person must renew the permit issued to his shop by paying a renewal fee of Seven Dollars (\$7) before July 1 of each year.

(H) The owner or manager of a barber shop which is being operated on the effective date of this Act must obtain a permit before November 2, 1967, to continue operating the shop. The permit is effective until November 1, 1968 and must be renewed annually thereafter as provided in Subsection (G) of this section.

(I) No person may operate a barber shop unless the shop is at all times under the general supervision and management of a registered Class A barber.

(J) A person operating under a permit who wishes to move his operation to another location may do so by notifying the Board of Barber Examiners ten (10) days before he makes the move.

<sup>1</sup> Now, this chapter (article 8401 et seq.).

#### Definitions of Barbering

Sec. 4. The practice of barbering is hereby defined to be the following practices when not done in the practice of medicine, surgery, osteopathy, or necessary treatments of healing the body by one authorized by law to do so; and when not done by a relative who cuts only the hair of those in his or her immediate family; and when done on living male persons.

(A) Shaving or trimming the beard.

(1) Cutting the hair;

(2) Styling or processing the hair of males only.

(B) By giving any of the following treatments by any person engaged in shaving or trimming the beard and/or cutting the hair.

(1) Giving facial and scalp massages, or applications of oils, creams, lotions, or other preparations, either by hand or electrical appliances;

(2) Singeing, shampooing, or dyeing the hair or applying hair tonics;

(3) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck or that part of the body above the shoulders.

Provided, however, that nothing contained in this Act shall be construed to include those persons lawfully engaged in beauty culture, hairdressing or cosmetology as provided by law, when so engaged in giving treatments or

applications to female persons only, but such persons shall not be permitted to shave, trim the beard, style, process, color or cut the hair of male persons except in accordance with the provisions and requirements of this Act relating to barbering.

#### Assistant Under Supervision of Registered Class A Barber

Sec. 5. No registered assistant barber shall independently practice barbering, but he may as an assistant barber do any or all of the acts constituting the practice of barbering under the general supervision of a registered Class A Barber, who is engaged in barbering full time in the same shop. No more than three assistant barbers shall be employed for each registered Class A barber, in any shop.

#### Certificates to Practice; Issuance

Sec. 6. It shall be unlawful for any person to follow the occupation of cutting hair, or practice as a haircutter in any beauty shop or hair dressing parlor or elsewhere for hire as hereinbefore provided unless excepted by this act, unless such person shall have first obtained a Certificate, as herein provided, which certificate shall authorize the cutting of hair only in such parlor or establishment where such haircutting is for hire or reward. Applications for such certificates styled "Class B" must possess the qualifications required of others made amenable to the provisions of this act, and the application shall be made likewise and the same fees paid. Before any certificate is issued to such haircutter he or she shall submit to an examination to test their qualifications as a haircutter, and such examination shall be held and conducted in the same manner and by the same persons as is required by law of "Class A," except that such applicants shall only be examined as to their skill, ability and knowledge of properly performing the art or science of haircutting, and their knowledge of hygiene and sanitation pertaining thereto.

Any person who for a period of two years prior to the taking effect of this act, was bobbing or cutting hair in any beauty shop or hair dressing establishment shall be entitled to a certificate without taking an examination. Application shall be made in the same manner as that made for "Class A". "Class A" and "Class B" as used herein shall refer to the classifications prescribed herein and shall include Registered Barbers and Registered Assistant Barbers as defined and used in the sections of this act.

Registered Barbers and Registered Assistant Barbers may obtain "Class B" as well as "Class A" Certificates, and shall be governed under the same provisions as "Class A" barbers or assistant barbers. The following persons shall be exempt from the provisions of this act while in the proper discharge of their professional duties in addition to those heretofore exempt:

(a) Persons authorized under the laws of the State of Texas to practice medicine, or osteopathy;

- (b) Commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital service;
- (c) Registered Nurses.

#### Qualification of Applicant for Certificate

Sec. 7. Any person is qualified to receive a certificate of registration to practice barbering:

- (a) Who is qualified under the provisions of Section 8 of this Act.
- (b) Who is at least eighteen (18) years of age and who has practiced as an assistant barber under authority of a certificate issued by the Board of Barber Examiners, as such, for at least eighteen (18) months.
- (c) Who is of good moral character and temperate habits; and
- (d) Who has passed a satisfactory examination conducted by the Board to determine his fitness for practicing barbering.

Provided, however, that an applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the Board must continue to practice as an assistant barber for an additional six (6) months before he is again entitled to take the examination as a registered barber.

#### Qualification of Applicant as Assistant Barber

Sec. 8. Any person is qualified to receive a certificate of registration as a registered assistant barber

- (a) Who is at least sixteen and one-half years of age; and
- (b) Who is of good moral character and temperate habits; and
- (c) Who has graduated from a school of barbering approved by the Board; and
- (d) Who has passed a satisfactory examination conducted by the Board to determine his fitness to practice as a registered assistant barber.

#### Permit to Operate Barber School or College

Sec. 9. (a) Any firm, corporation, partnership or person desiring to conduct or operate a barber school or college in this State shall first obtain a permit from the State Board of Barber Examiners after demonstrating that said school or college has first met the requirements of this Section. Said permit shall be prominently displayed at all times at such school or college. No such school or college shall be approved unless such school or college requires as a prerequisite to graduation a course of instruction of not less than twelve hundred (1,200) hours, to be completed within a period of not less than seven (7), months for a "Class A" certificate and not less than one thousand (1,000) hours, to be completed within a period of not less than six (6) months for a "Class B" certificate; and no certificate or permit shall be issued as provided for herein to an applicant to be a student in such a school or

college unless said applicant demonstrates his or her ability to read intelligently and write clearly the English language determined by an examination conducted by the school or college.

(b) Such schools or colleges shall instruct students in such subjects as may be necessary and beneficial in teaching the practice of barbering, including the following subjects: scientific fundamentals of barbering; hygienic bacteriology, histology of the hair, skin, muscles, and nerves; structure of the head, neck and face; elementary chemistry relating to sterilization and antiseptics; common disorders of the skin and hair; massaging and manipulating the muscles of the scalp, face, and neck; hair-cutting; shaving, shampooing, and bleaching and dyeing of the hair. However, if said school does not care to teach persons who apply for "Class A" but only "Class B" certificates, shaving need not be taught.

(c) No barber school or college which issues "Class A" certificates shall be approved by the Board for the issuance of a permit, unless said school or college has the following:

(1) An adequate school site housed in a substantial building of a permanent-type construction containing a minimum of not less than two thousand, eight hundred (2,800) square feet of floor space. Such space shall be divided into the following separate departments: a senior department, a junior department, a class theory room, a supply room, an office space, a dressing and cloak room, and two (2) sanitary, modern separate rest rooms, equipped with one (1) commode each and a urinal in one (1) rest room.

(2) A hard-surface floor covering of tile or other suitable material.

(3) A minimum of twenty (20) modern barber chairs with cabinet and mirror for each chair.

(4) One (1) lavatory in back of each two (2) chairs.

(5) A liquid sterilizer for each chair.

(6) An adequate number of latherizers, vibrators, and hair dryers for the use of students.

(7) Adequate lighting of all rooms.

(8) At least twenty (20) classroom chairs, a blackboard, anatomical charts of the head, neck and face, and one (1) barber chair in the class theory room.

(9) A library and library facilities available to students, containing a medical dictionary and a standard work on the human anatomy.

(10) Adequate drinking fountain facilities, but at least one (1) to each floor.

(11) Adequate toilet facilities for the students.

(12) Adequate fire-fighting equipment to be maintained in case of emergency.

(d) Anything to the contrary in this Act notwithstanding, each such school shall place a sign on the front outside portion of its building in a prominent place. Such sign shall read "BARBER SCHOOL—STUDENT BARBERS", and shall be a minimum size of ten-inch block letters. Printed signs containing the foregoing information shall be prominently displayed upon each inside wall of the establishment.

(e) A minimum of five (5) one-hour periods of each week shall be devoted to the instruction of theory in the classroom with Saturdays being devoted exclusively to practical work over the chair. An attendance record book must be maintained by the school showing a record of the students' daily attendance. These records are subject to inspection at any and all times by the Board.

(f) No barber school or college which issues "Class A" certificates shall be approved by the Board unless it is under the direct supervision and control of a barber who holds a current registered "Class A" certificate to practice barbering under the Texas Barber Law, and who can show evidence of at least five (5) years experience as a practicing barber. Each school shall have at least one (1) teacher who has a teacher's certificate issued by the Board upon examination and who is capable and qualified to teach the curriculum outlined herein to the students of such school. All such teachers are required to obtain a teacher's certificate from the Board and, in addition to requirements set forth by the Board, must meet the following requirements:

(1) Demonstrate their ability to teach the said curriculum outlined herein through a written and practical test to be given by the Board.

(2) Hold a current certificate as a registered "Class A" barber under this law.

(3) Demonstrate to the Board that such applicant is qualified to teach and instruct, to be determined at the discretion of the Board, and show evidence that the applicant has had at least six (6) months experience as a teacher in an approved school or college in Texas or in another state approved by the Board, or have completed a six-month postgraduate course as a teacher in an approved barber school or college in Texas.

Applicants desiring an examination for a teacher's certificate shall make an application to the Board and accompany same with an examination fee of Twenty-five Dollars (\$25). A new application and fee must be presented for each examination taken by the applicant and fees paid are not refundable. A teacher's certificate shall be issued upon satisfactory completion of the examination and payment of a certificate fee of Twenty-five Dollars (\$25) if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or Twelve Dollars and Fifty Cents (\$12.50) if the appli-

cant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year. Teacher's certificates shall be renewed biennially on or before November 1st of odd-numbered years upon the payment of a renewal fee of Twenty-five Dollars (\$25).

(g) In addition to a minimum of one (1) teacher required in paragraph (3) above, each barber school or college which issues "Class A" certificates shall maintain at least one (1) qualified instructor, holding a registered "Class A" certificate, for each twenty (20) students or any fraction thereof for instruction in practical work; provided, however, that a teacher can also serve as an instructor in practical work in addition to his position as a theory teacher.

(h) No barber school or college shall be issued a permit to operate under the provisions of this Section until it has first furnished the following evidence to the Board:

(1) A detailed drawing and chart of the proposed physical layout of such school, showing the departments, floor space, equipment, lights and outlets.

(2) Photographs of the proposed site for such school including the interior and exterior of the building, rooms and departments.

(3) A detailed copy of the training program.

(4) A copy of the school catalog and promotional literature.

(5) A copy of the building lease or proposed building lease where the building is not owned by the school or college.

(6) A sworn statement showing the true ownership of the school or college.

(7) A permit fee of Five Hundred Dollars (\$500).

No such school or college shall be operated and no students shall be solicited or enrolled by it until the Board shall determine that the school has been set up and established in accordance with this Section and the proposal submitted to the Board and approved by it prior to the issuance of a permit. Any such school or college must obtain renewal of its certificate by September 1st each year by the payment of an annual renewal fee of One Hundred Twenty-five Dollars (\$125).

(i) When a barber school or college changes ownership, the Board shall be notified of the transfer within ten (10) days from the date of such change.

(j) Any school or college desiring to change the location of such school or college must first obtain approval by the Board by showing that the proposed location meets the requirements of this Section.

(k) If said Board refuses to issue a permit to any such school or college, such school or college may by written request demand the rea-

sons for said refusal and if said school or college shall thereupon meet said requirements and makes a showing that the requirements of this law have been complied with, then if said Board refuses to issue said permit, a suit may be instituted by such school or college in any of the District Courts of Travis County, Texas, to require said Board to issue such permit. Any such suit must be filed within twenty (20) days after the final order of said Board refusing to issue such permit is entered, provided registered notice is mailed or it is otherwise shown that said school or college has notice within ten (10) days from the entering or making of said order.

(l) In the event such school or college after a permit is issued to it violates any of the requirements of this law, either directly or indirectly, then said Board shall suspend or revoke the permit of any such school or college. Before suspending or revoking any such permit, said Board must give such school or college a hearing, notice of which hearing shall be delivered to such school or college at least twenty (20) days prior to the date of said hearing. If said Board suspends or revokes said permit at said hearing, then such school or college may file suit to prevent the same or to appeal from said order. Any and all suits filed hereunder shall be filed within twenty (20) days from the date of the order of said Board in any of the District Courts of Travis County, Texas, and not elsewhere, and the order shall not become effective until said twenty (20) days has expired.

(m) The Attorney General or any District or County Attorney may institute any injunction proceedings or such other proceeding as to enforce the provisions of this Act, and to enjoin any barber, assistant barber, or school or college from operating without having complied with the provisions hereof, and each shall forfeit to the State of Texas the sum of Twenty-five Dollars (\$25) per day as a penalty for each day's violation, to be recovered in a suit by the District or County Attorney, and/or the Attorney General.

(n) Nothing in this Section shall prevent the practice of barbering or practice as a hairdresser or cosmetologist by present holders of "Class B" certificates, but any persons obtaining a "Class B" certificate as that term is defined in House Bill No. 104, Acts of the Forty-first Legislature, First Called Session, 1929, as amended (codified as Article 734a, Penal Code of the State of Texas),<sup>1</sup> after the effective date of this Act shall not engage in the practice of barbering as barbering is defined in the said House Bill No. 104.

<sup>1</sup> Now this article.

#### Application for Examination

Sec. 10. Each applicant for an examination shall

(a) Make application to the Board on blank forms prepared and furnished by the Board for an examination before the

Board, which application shall be in such form and shall contain such matters as may be required by the Board, and shall be verified by the oath of said applicant:

(b) Each applicant shall at the time of the presentation of the application furnish to the Board photographs of such applicant, one to accompany the application and one to be returned to the applicant to be presented to the Board when applicant appears for examination.

(c) Each applicant shall at the time of the presentation of the application pay to the Board the fee required under this Act.

#### Conduct of Examinations

Sec. 11. The Board shall conduct examination of applicants for certificates of registration to practice as registered barbers and of applicants for certificates of registration to practice as registered assistant barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. The examination of applicants for certificates of registration as registered barbers and as registered assistant barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board.

#### Certificates to Successful Applicants

Sec. 12. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant a certificate of registration as a registered barber or as a registered assistant barber, where such applicant shall have passed a satisfactory examination making an average grade of not less than seventy-five per cent, and who shall possess the other qualifications required by this Act.

#### Permit to Practice as Journeyman Barber

Sec. 13. Any person who is at least sixteen and one-half years of age, and who can furnish evidence of good moral character and temperate habits, and who has a diploma showing graduation from a seven-grade grammar school, or its equivalent as determined by an examination conducted by the Board, and either

(a) Has a license or certificate of registration as a practicing barber from another State or country, which has substantially the same requirements for licensing or registering barbers as required by this Act, or

(b) Who can prove by personal affidavit that he has practiced as a barber in another State for at least two years immediately prior to making application in this State, and who possesses the qualifications required by this Act, shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber only until

he is called by the Board of Barber Examiners to determine his fitness to receive a certificate of registration to practice barbering. Should such applicant fail to pass the required examination he shall be allowed to practice as a journeyman barber until he is called by the Board for the next term of examination. Should he fail at the examination he must cease to practice barbering in this State.

#### Assistant Barbers; Barbers' Technicians

Sec. 14. (a) Any assistant barber who is at least sixteen and one-half years of age and who is of good moral character and temperate habits and who has a diploma showing graduation from a seventh grade grammar school, or an equivalent education as determined by an examination conducted by the Board, and who has a certificate of registration as an assistant barber in a State or country which has substantially the same requirements for registration as an assistant barber as is provided for by this Act, shall upon payment of the required fee be issued a permit to work as an assistant barber until called by the Board of Examiners for examination to determine his fitness to receive a certificate of registration as an assistant barber. Should such person be able to pass the required examination, he will be issued a certificate of registration as a registered assistant barber, and that the time spent in such other State or country as an assistant barber shall be credited upon the period of assistant barber required by this Act as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

(b) Any person who has spent at least thirty (30) working days at a licensed barber school or college as a barber's technician including the study of shampooing, shampoos, manipulations, making appointments, preparing patrons, drying hair, sterilizing tools, and study of sterilization and the barber laws may be licensed to practice as a barber's technician. Any licensed barber's technician may assist the barber in shampooing and sterilizing in a barber shop and shall work under the direction of a registered class-A barber or a men's hair stylist. No barber's technician may cut hair.

#### Recognition of Practice as Assistant in Another State

Sec. 15. Any person who has practiced as an assistant barber in another State or country which does not have substantially the same requirements for registration as an assistant barber as is required by this Act, and who has the qualifications required in subdivisions (a), (b), (c), (d), and (e) of Section 8 of this Act, shall be credited with the time so spent as an assistant barber in such other State or country, upon the period of service as assistant barber required by this Act, as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

#### Recognition of Existing Practicing Barbers; Fees

Sec. 16. Any person who has for two (2) years immediately preceding the taking effect of this Act been continuously engaged in the practice of barbering at one or more established places of business, shall be granted a certificate of registration as a registered barber without examination by making application to the Board on or before the expiration of sixty (60) days after the passage of this Act, and by paying the required fee of Ten dollars (\$10.00). The required fee, as referred to herein, shall mean ten dollars (\$10.00), but certificates shall be issued to those entitled thereto according to the classification under which they fall, to wit, Class A and Class B.

#### Credit for Time Previously Spent by Assistant Barber

Sec. 17. Any person who on and prior to the taking effect of this Act was practicing as an assistant barber under the supervision of a practicing barber, shall be granted a certificate of registration to practice as an assistant barber by making application to the Board on or before the expiration of sixty (60) days after the passage of this Act, and paying the required fee of Ten dollars (\$10.00), and shall be given by the board credit for the time previously spent in such practice, according to the classification under which they may fall, to wit, Class A and Class B.

#### Graduates of Existing Barber Schools

Sec. 18. Any person who on or prior to the date of the taking effect of this Act was a student in a school of barbering is qualified upon graduation from such school to take the examination for a certificate of registration to practice as an assistant barber, without regard to whether such school complied with the standards for approval specified in Section 9 of this Act.

#### Display of Certificate

Sec. 19. Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work-chair in the shop in which he is working or employed.

#### Renewal of Certificates; Restoration of Expired Certificates; Fees

Sec. 20. (a) Every registered barber, registered assistant barber, and barber technician who continues in active practice or service shall renew his certificate of registration on or before November 1, 1973, and biennially on or before November 1 of odd-numbered years thereafter. The Board of Barber Examiners shall issue the renewal certificate upon payment of a biennial renewal fee of Twenty-five Dollars (\$25). Every certificate of registration which has not been renewed prior to that date shall expire on November 1 of that year.

(b) A registered barber or a registered assistant barber, whose certificate of registration has expired, may, within thirty (30) days thereafter, and not later, have his certificate of registration restored upon making a satis-

factory showing to the Board, supported by his personal affidavit, which in the opinion of the Board, will excuse the applicant for having failed to renew his certificate within the time required by this Act.

(c) Any registered barber who retires from the practice of barbering for not more than five (5) years may renew his certificate of registration by making proper showing to the Board, supported by his personal affidavit, which, in the opinion of the Board, would justify the Board in issuing a certificate to such applicant as upon an original application upon payment of a fee of Thirty Dollars (\$30) if the applicant applies during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or Seventeen Dollars and Fifty Cents (\$17.50) if the applicant applies during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

(d) Any registered barber who retires from the practice of barbering for more than five (5) years may renew his certificate of registration by making application to the Board and by making proper showing to the Board, supported by his personal affidavit, and by paying an examination fee of Ten Dollars (\$10), passing a satisfactory examination conducted by the Board, and paying a license fee of Twenty-five Dollars (\$25) if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or Twelve Dollars and Fifty Cents (\$12.50) if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

**Renewal While in Armed Forces; Fee.**

Sec. 20a. Any registered barber, registered assistant barber or barber technician shall not be required to renew his certificate of registration while serving on active duty in the military, air or naval forces of the United States, and the Board shall issue a renewal certificate upon application and payment of a renewal fee within ninety (90) days from the date such registered barber, registered assistant barber, or barber technician is released or discharged from active duty in the armed forces. The renewal fee shall be:

(1) Ten Dollars (\$10) if the application and payment is made during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year;

(2) Five Dollars (\$5) if the application and payment is made during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

**Expiration Dates of Certificates; Proration of Fees**

Sec. 20b. The board by rule may adopt a system under which certificates expire on vari-

ous dates during the year. For the year in which the expiration date is changed, certificate renewal fees payable on November 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certificate renewal fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

**Refusal, Suspension or Revocation of Certificates; Grounds**

Sec. 21. The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration for any one of, or a combination of the following causes:

(A) Gross malpractice;

(B) Continued practice by a person knowingly having an infectious or contagious disease;

(C) Advertising by means of knowingly making false or deceptive statements;

(D) Advertising, practicing, or attempting to practice under another's trade name or another's name;

(E) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(F) Immoral or unethical conduct;

(G) The commission of any of the offenses described in Section 24 of this Act;

(H) No certificate shall be issued or renewed, unless and until each applicant shall present a health certificate from a regular practicing medical doctor showing that the applicant is free from any kind of infectious or contagious diseases, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said medical examiner that all of the said facts are true.

**Violation or Noncompliance With Requirement; Hearing; Denial, Suspension or Revocation of Certificate; Appeal**

Sec. 22. (a) If a barber inspector believes that any of the grounds specified in Section 21 exist, or that the holder of a certificate or permit has failed to comply with any of the requirements of this Act, he shall notify the holder of the certificate or permit of that fact and summons him to appear for hearing as provided in this section. The hearing shall be had not less than twenty (20) days after notification in writing to the holder of the certificate or permit, specifying the violation or non-compliance alleged. For the purpose of hearing such cases concurrent jurisdiction is vested in the county court of the county where the holder of the certificate or permit resides and in the county court of the county where the violation allegedly occurred. The court may administer oaths and may issue subpoenas for the

attendance of witnesses and the production of relative books and papers. The holder of the certificate or permit shall have the right to be represented by counsel. At the hearing, the board shall be represented by the attorney general, district attorney or county attorney. At such a hearing the issue to be determined is whether any grounds exist under Section 21 for denial, refusal to renew, suspension, or revocation of the certificate or permit. The judge who presides at the hearing shall report his finding to the board, which may, if the finding warrants, deny, suspend, revoke, or refuse to renew the certificate or permit.

(b) If, after the hearing specified in Subsection (a), the board denies, suspends, revokes, or refuses to renew a certificate or permit, then the person holding the certificate or permit may file suit to prevent the action of the Board or to appeal from the order of the Board. Any and all suits filed hereunder shall be filed within twenty (20) days from the date of the order of said Board in a District Court of the county where the person filing such suit or appeal has his residence, or in any of the District Courts of Travis County, Texas. Such suit shall be a trial de novo as that term is used in appeals from Justice Courts to County Courts, and under no circumstances shall the substantial evidence rule, as defined by the Supreme Court of Texas, ever be used or applied in such cases. The burden of proof shall be on the Board to prove a violation.

Sec. 22-A. Repealed by Acts 1967, 60th Leg., p. 2021, ch. 746, § 5b, eff. Aug. 28, 1967.

#### Fees

Sec. 23. (a) The fees to be paid to the Board by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering, to practice as an assistant barber, or to practice as a barber technician shall be Ten Dollars (\$10.00).

(b) The fees to be paid to the Board by an applicant who has satisfactorily passed the examination and complied with the other provisions of this Act to receive a certificate of registration to practice barbering, to practice as an assistant barber, or to practice as a barber technician shall be:

(1) Twenty-five Dollars (\$25.00) if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year;

(2) Twelve Dollars and Fifty Cents (\$12.50) if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

#### Duplicate Certificates

Sec. 23a. A duplicate registrant certificate may be issued by the Board of Barber Exam-

iners on written application of the registrant and payment of a fee of Five Dollars (\$5).

#### Offenses and Penalty

Sec. 24. Each of the following offenses shall constitute a misdemeanor punishable upon conviction in a court of competent jurisdiction by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00).

(A) The violation of any of the provisions of Sections 1, 2, 3, and 5 of this Act;

(B) Permitting any person in one's employ, supervision or control to practice as a barber or as an assistant barber, unless that person has a current certificate of registration issued by the board;

(C) Obtaining or attempting to obtain a certificate of registration by fraudulent representation;

(C-1) For anyone who owns, operates or manages a barber school or college to work a chair or to permit teachers, instructors, licensed barbers or any one other than an enrolled student to render barbering services to the public in their said establishment;

(D) The willful failure to display a certificate of registration as required by Section 19 of this Act.

#### False Statements

Sec. 25. The wilful making of any false statement as to a material matter in any oath or affidavit which is required by the provisions of this Act to be made is false swearing and punishable as such under the laws of this State.

#### State Board of Barber Examiners; Appointment and Term

Sec. 26. A Board to be known as the State Board of Barber Examiners is hereby created and shall consist of three (3) members to be appointed by the Governor upon the taking effect of this Act. Each member of said Board shall be a practical barber who has followed the occupation of a barber of this State for at least five (5) years immediately prior to his appointment. The members of the first Board appointed under this Act shall serve for six (6) years, four (4) years, and two (2) years, respectively, as appointed, and members appointed thereafter shall serve for six (6) years. The Governor may remove any member of the Board for cause. All members appointed by the Governor to fill vacancies in the Board caused by death, resignation, or removal shall serve during the unexpired term of his predecessor.

#### Officers of Board; Compensation of Members; Compensation and Bond of Secretary

Sec. 27. The State Board of Barber Examiners shall elect one of its members as president, and shall elect a secretary and such other employees, as may be necessary, to carry out the provisions of this Act and House Bill No.

104, Chapter 65, Acts of the Forty-first Legislature, First Called Session, as amended,<sup>1</sup> and provide for the compensation of such secretary and other employees. Said Board shall maintain its office in the State Office Building in the City of Austin, Texas, and shall adopt rules and regulations for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The secretary shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasurer, which special fund is hereby appropriated for the purpose of carrying out all the provisions of this Act. Annually at the close of business on August 31st of each year, a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas.

The secretary shall give a surety bond, payable to the State of Texas in the sum of Five Thousand Dollars (\$5,000), conditioned on the faithful performances of his duties as secretary, to be approved by the Board and filed with the State Comptroller. A majority of the Board in meetings duly assembled may perform and exercise all the duties and powers devolving upon the Board.

The compensation of the members of the Board shall be a per diem as set by the General Appropriations Act, and in addition to the per diem provided for herein, they shall be entitled to traveling expenses in accordance with the appropriate provisions of the General Appropriations Act. Each Board member shall make out, under oath, a complete itemized statement of the number of days engaged and the amount of his expenses when presenting same for payment.

<sup>1</sup> This article.

**Inspectors; Sale of Supplies or Engaging in  
Other Business**

Sec. 27a. (a) No barber inspector or other employee of the State Board of Barber Examiners may sell barber supplies or engage in any other business which deals directly with barbers, barber shops, or barber schools except that he may engage in the practice of barbering.

(b) Violation of this section is a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by confinement in the county jail for not more than two years, or both.

**Sanitary Rules and Regulations**

Sec. 28. The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops and barber schools and inspect same at any time during business hours. That a copy of the sanitary rules and regulations adopted by said Board shall be furnished to the Secretary of the State Board of Barber Examiners who shall in turn forward to each barber and barber school a copy of same. That a copy of the sanitary rules and regulations promulgated and adopted by the State Board of Health shall be kept posted in all barber shops and barber schools in this State.

**Records of Board**

Sec. 29. The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration. This record shall also contain the name, place of business, and residence of each registered barber and registered assistant barber, and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times.

**Partial Invalidity**

Sec. 30. If any section, sub-section, sentence, clause, or phrase of this Act for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

[Acts 1929, 41st Leg., 1st C.S., p. 166, ch. 65; Acts 1929, 41st Leg., 2nd C.S., p. 129, ch. 62, § 1; Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, §§ 2 to 4; Acts 1933, 43rd Leg., p. 802, ch. 235, §§ 1 to 3; Acts 1945, 49th Leg., p. 579, ch. 343, § 1; Acts 1951, 52nd Leg., p. 449, ch. 276, §§ 1, 1a, 2; Acts 1961, 57th Leg., p. 601, ch. 287, §§ 1 to 3, eff. Aug. 28, 1961; Acts 1967, 60th Leg., p. 2019, ch. 746, §§ 2 to 7, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 3402, ch. 1036, § 51, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 539, ch. 230, §§ 1 to 7, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 627, ch. 266, § 19, eff. June 11, 1973.]

**CHAPTER TWO. COSMETOLOGY**

**Art. 8451a. Cosmetology Regulatory Act**

**Definitions**

Sec. 1. As used in this Act:

- (1) "Person" means any individual, association, firm, corporation, partnership, or organization.
- (2) "Commission" means the Texas Cosmetology Commission.
- (3) "Cosmetology" means the beautifying treatment of a female's hair or skin, or nails of a male or female and includes the following practices:

(A) arranging, dressing, curling, waving, cleansing, singeing, bleaching,

tinting, coloring, cutting, trimming, shaping, or straightening the hair by any method or means;

(B) massaging, cleansing, beautifying, or stimulating the scalp, face, neck, arms, bust, or upper portion of the body by the use of a cosmetic preparation, antiseptic, tonic, lotion, or cream;

(C) removing superfluous hair from the body by use of depilatories or tweezers;

(D) manicuring; and

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subsection.

(4) "Public school" includes public high school, public junior college, and any other state-supported institution conducting a cosmetology program.

#### Texas Cosmetology Commission

Sec. 2. (a) The Texas Cosmetology Commission is created. The commission shall be composed of one member holding a valid beauty shop license who has no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school; one member holding a valid private beauty culture school license who has no direct or indirect affiliation with or interest, financial or otherwise, in a beauty shop; one member holding a valid operator license; one member holding a valid wig specialist, wig instructor, wig salon, or wig school license who has no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school or beauty shop; and two members of the general public who are not licensees under this Act and who have no direct or indirect affiliation with or interest, financial or otherwise, in any facet of the beauty industry. The Associate Commissioner for Occupational Education and Technology of the Texas Education Agency or his authorized representative shall as part of his duties serve as an ex officio member of the commission with voting privileges. Members shall be appointed without consideration of race, color, religion, sex, or national origin.

(b) To qualify as a member, a person must be a citizen of the United States and a resident of Texas, at least 25 years of age, and actively engaged in the area which he represents for a period of five years immediately preceding appointment.

(c) The members of the commission shall be appointed by the governor, with the advice and consent of the senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on December 31 of odd-numbered years. In making the initial appointments, the governor shall designate two members for terms expiring in 1973, two mem-

bers for terms expiring in 1975, and two members for terms expiring in 1977. No person may serve more than two consecutive terms.

(d) Each appointee to the commission shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the commission.

(e) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

#### Commission Organization and Meetings

Sec. 3. (a) The commission shall elect from its members for a term of two years a chairman, vice chairman, and secretary-treasurer, and may appoint such committees as it considers necessary to carry out its duties.

(b) The commission shall meet at least four times a year. Additional meetings may be held on the call of the chairman or at the written request of the majority of the commission.

(c) The quorum for any meeting of the commission is four members. No action by the commission or its members has any effect unless a quorum is present.

#### Powers and Duties of the Commission

Sec. 4. (a) The commission may issue rules and regulations consistent with this Act after a public hearing. Notice of the public hearing shall be issued at least 20 days prior to the date set for the hearing. The rules and regulations shall be published and furnished to licensees under this Act. Notwithstanding any other provision of this Act, the Commission shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act, or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal or unnecessary.

(b) The commission shall prescribe application forms for the issuance of original and renewal licenses and the design of the license.

(c) The commission shall prescribe the minimum curricula of the subjects and hours of each to be taught by beauty culture schools.

(d) The commission shall prescribe the method and content of the examinations administered under this Act. The examination shall include practical demonstrations as well as written tests relating to the subject matter established as curricula by the commission.

(e) The commission shall establish sanitation rules and regulations designed to prevent the spread of infectious and contagious diseases.

(f) The commission shall keep a record of its proceedings in a book kept for that purpose.

(g) The commission shall adopt an official seal. The commission shall have suitable office space to administer the provisions of this Act.

(h) The commission may authorize all necessary disbursements to carry out the provisions of this Act, including the premium for the bond of the executive director, office expenses, and costs of equipment and other necessary facilities.

#### Compensation

Sec. 5. (a) Members of the commission are entitled to receive \$25 a day and reimbursement for actual travel expenses incurred in performing the duties of their office. Per diem compensation may not exceed 30 days in any calendar year for each member.

(b) The compensation of other employees of the commission shall be set by the general appropriations act.

#### Executive Director

Sec. 6. (a) The commission shall employ an executive director who is at least 25 years of age, has knowledge of the beauty industry, and has at least five years of business experience immediately prior to employment. The executive director shall administer and enforce the provisions of this Act and shall have such duties and responsibilities as the commission may determine.

(b) The executive director, before entering upon the duties of the office, shall give a good and sufficient bond executed by a surety company authorized to do business in the State of Texas, in the sum of \$10,000 payable to the State of Texas, conditioned for the faithful performance of his duties. The bond premium shall be paid by the commission.

#### Licensing Division

Sec. 7. (a) The commission shall employ a director of licensing who must be at least 25 years of age and who has been a licensee under this Act for at least 5 years.

(b) The director of licensing shall collect all license fees, issue all licenses, and maintain a record of all licensees under this Act. A copy of the list of licensees shall be made available to any person requesting it on payment of a fee established by the commission as sufficient to cover the costs of the copy.

#### Examination Division

Sec. 8. (a) The commission shall employ a director of examinations who must be at least 25 years of age and who has been a licensee under this Act for at least 5 years.

(b) The director of examinations shall be responsible for the administration and grading of all examinations and keep a record of all examinees and the grade scored by each.

#### Inspection Division

Sec. 9. (a) The commission shall employ a director of inspections who shall be at least 25 years of age and who has been a licensee under this Act for at least 5 years.

(b) The director of inspection shall supervise the inspection of establishments and the performance of all licensees under this Act and report any violations of this Act to the executive director.

(c) No person may be employed as an inspector unless he is at least 25 years of age and has been a licensee under this Act for five years immediately preceding employment.

#### Affiliation With Beauty Industry

Sec. 10. No employee of the commission may be a member of, affiliated with, or have any financial interest in the beauty industry during the period of his employment.

#### Disposition of Funds

Sec. 11. (a) The executive director shall remit, on or before the 10th day of each month, to the state treasurer all the fees collected under this Act during the preceding month for deposit in the general revenue fund.

(b) On August 31 of each year, the commission shall file with the state comptroller its annual report in such form as may be required by the comptroller.

(c) Funds for the administration of this Act shall be provided by the General Appropriations Act.

(d) The balance of all money remaining in the "State Board of Cosmetology Fund" and the "Examination Facilities" account on August 31, 1971, is transferred to the general revenue fund.

#### Prohibited Acts

Sec. 12. (a) No person for compensation may perform or attempt to perform any practice of cosmetology, as defined in Section 1, without first obtaining a license to perform that practice, except for hair cleansing and scalp conditioning as provided by Subsection (c) of this section.

(b) No person for compensation may conduct or operate a beauty shop, beauty culture school, wig salon, wig school, or any other place of business in which a practice of cosmetology, as defined in Section 1, is taught or practiced without first obtaining a license.

(c) No person for compensation may perform or attempt to perform the duties of a hair technician who engages solely in the practice of cosmetology for hair cleansing and scalp conditioning without first having been trained in a vocational rehabilitation program or in a school program approved by the Texas Education Agency and the Texas Cosmetology Commission and without having received certification from the Texas Cosmetology Commission to engage in the practice of hair cleansing and scalp conditioning.

**Manicurist License**

Sec. 13. (a) A person holding a manicurist license may perform for compensation only the practice of cosmetology defined in Subdivision (3)(D) of Section 1 of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours instruction in manicuring.

(c) The application shall be made on a form prescribed by the commission and a \$5 manicurist examination fee must accompany the application. The application and fee shall be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a manicurist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$5 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

**Wig Specialist License**

Sec. 14. (a) A person holding a wig specialist license may perform for compensation only the practice of cosmetology defined in Subdivision (3)(E) of Section 1 of this Act.

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a \$5 examination fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig specialist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

**Operator License**

Sec. 15. (a) A person holding an operator license may perform for compensation any practice of cosmetology defined in Subdivision (3) of Section 1 of this Act except those practices defined in Subdivision (3)(E) of Section 1 of this Act unless proof of at least 150 hours instruction in the care and treatment of wigs and artificial hair pieces is submitted upon application for an operator license. Each operator license shall contain indication of the practices of cosmetology which may be performed by the licensee. The 150 hours instruction in the care and treatment of wigs and artificial hair pieces may be included within the hours of instruction required for an operator license in Subsection (b) of this section.

(b) An applicant for an operator license must be at least 16 years of age, have complet-

ed the seventh grade or its equivalent, and have completed 1,500 hours of instruction in a licensed beauty culture school or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a public vocational school.

(c) The application shall be made on a form prescribed by the commission and a \$5 examination fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to an operator license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

**Instructor License**

Sec. 16. (a) A person holding an instructor license may perform for compensation any practice of cosmetology defined in Subdivision (3) of Section 1 of this Act and may instruct a person in any practice of cosmetology as defined by this Act.

(b) An applicant for an instructor license must be at least 18 years of age, have completed the 12th grade or its equivalent, have a valid operator license, have completed 1,000 hours of instruction in cosmetology courses and methods of teaching in a licensed private beauty culture school or in a vocational training program of a publicly financed junior college.

(c) The application shall be made on a form prescribed by the commission and a \$5 examination fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to an instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$20 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

**Wig Instructor License**

Sec. 17. (a) A person holding a wig instructor license may perform for compensation the practice of cosmetology as defined in Subdivision (3)(E) of Section 1 of this Act and may instruct a person in that practice of cosmetology as defined by Subdivision (3)(E) of Section 1.

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the commission and a \$5 examination fee must accompany the application. The application and fee must be filed at least

10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$20 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

#### Temporary License

Sec. 18. (a) A person holding a temporary license may perform for compensation any practice of cosmetology defined by this Act at national, international or state conventions or educational shows held in this state.

(b) An applicant for a temporary license must possess a valid operator license from another state or nation.

(c) A temporary license shall be issued on submission of an application form prescribed by the commission and payment of a \$25 temporary license fee if the applicant meets the requirements of Subsection (b) of this section.

(d) A temporary license expires on the 60th day after the date of issue and no person may be issued more than two temporary licenses in any one calendar year.

#### Duplicate License

Sec. 19. A duplicate license shall be issued upon application on a form prescribed by the commission and payment of a \$5 duplicate license fee.

#### Reciprocal Licenses

Sec. 20. (a) Any person who holds a valid license issued by a state or nation whose requirements for the license are equivalent to or exceed the requirements of this state and which state or nation has similar reciprocal provisions for holders of licenses issued by this state may apply for a license to perform the same practice or practices of cosmetology in this state.

(b) The applicant shall submit an application on a form prescribed by the commission.

(c) A current Texas license shall be issued on compliance with the provisions of Subsections (a) and (b) of this section and the payment of a \$25 license fee.

(d) A license granted under this section allows the holder to engage in the practice of cosmetology stated on the front of the license. The holder of this license is subject to the renewal procedures and fees provided in this Act for the practice of cosmetology for which he is licensed.

#### Refund of Examination Fee

Sec. 21. An applicant who has paid an examination fee and fails to take the examination is entitled to a refund in the amount of the examination fee paid.

#### Private Beauty Culture School License

Sec. 22. (a) A person holding a private beauty culture school license may maintain an

establishment in which any practice of cosmetology as defined by this Act is taught for compensation.

(b) An applicant for a private beauty culture school license shall submit an application on a form prescribed by the commission. Each application shall be verified by the applicant and shall contain:

(1) a detailed floor plan of the school building divided into three separate areas: one for instruction in theory, one for practice work of seniors, and one for practice work of juniors; and

(2) a statement that the building is fire-proof and of permanent-type construction, contains a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students with a minimum of 2 sanitary toilets, and contains or will contain before classes commence the equipment established by rule of the commission as sufficient to properly instruct a minimum of 50 students.

(c) Each applicant shall furnish a good and sufficient surety bond payable to the State of Texas in an amount of \$5,000. The bond shall be conditioned to refund any unused portion of tuition paid if the school closes or ceases operation before the courses of instruction have been completed.

(d) Each application shall be accompanied by payment of a \$250 license fee.

(e) The facilities of each applicant shall be inspected. The applicant is entitled to a private beauty culture school license if the inspection shows that the provisions of this Act and the rules and regulations of the commission have been met and the applicant has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

#### Beauty Shop License

Sec. 23. (a) A person holding a beauty shop license may maintain an establishment in which any practice of cosmetology as defined in this Act is performed for compensation.

(b) An applicant for a beauty shop license shall submit an application on a form prescribed by the commission. The application shall contain proof of the particular requisites for a beauty shop as established by the commission and shall be verified by the applicant.

(c) The applicant is entitled to a beauty shop license if the application shows compliance with the rules and regulations of the commission, a \$25 license fee is paid, and he has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

#### Wig Salon License

Sec. 24. (a) A person holding a wig salon license may maintain an establishment in which only the practice of cosmetology as de-

ined in Subdivision (3)(E) of Section 1 of this Act is performed for compensation.

(b) An applicant for a wig salon license shall submit an application on a form prescribed by the commission. The application shall contain proof of the particular requisites for a wig salon as established by the commission and shall be verified by the applicant.

(c) The applicant is entitled to a wig salon license if the application shows compliance with the rules and regulations of the commission, a \$25 license fee is paid, and he has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

#### Wig School License

Sec. 25. (a) A person holding a wig school license may maintain an establishment in which only the practice of cosmetology as defined in Subdivision (3)(E) of Section 1 of this Act is taught for compensation.

(b) An applicant for a wig school license shall submit an application on a form prescribed by the commission. The application shall contain proof of the particular requisites for a wig school as established by the commission and shall be verified by the applicant.

(c) The applicant is entitled to a wig school license if the application shows compliance with the rules and regulations of the commission, a \$100 license fee is paid, and he has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

#### Public Vocational Schools

Sec. 26. The facilities and equipment of the vocational cosmetology program in a public school must be inspected and approved by the director of inspections prior to commencing operation.

#### Private Beauty Culture Schools

Sec. 27. A private beauty culture school shall:

- (1) maintain a sanitary establishment;
- (2) maintain on its staff and on duty during business hours not less than two full-time instructors licensed under this Act;
- (3) maintain an instructor-student ratio of one instructor per 25 students or fraction thereof;
- (4) maintain a daily record of attendance of students;
- (5) establish a regular class and instruction hours, grades, and hold examinations before issuing diplomas;
- (6) require a school term of not less than nine months and not less than 1,500 hours of instruction for a complete course in cosmetology;
- (7) require a school term of not less than six weeks and not less than 150 hours

instruction for a complete course in manicuring;

(8) if offering a course of instruction qualifying a student for a wig specialist license require a school term of not less than 12 weeks and not less than 300 hours instruction for a complete course in the practice of cosmetology on wigs and artificial hairpieces;

(9) require no student to work or be instructed or receive credit for more than eight hours of instruction in any one day, or for more than six days in any one calendar week;

(10) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and

(11) submit to the executive director the name of each student within 10 days after enrollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of such withdrawal or graduation.

#### Transfer of Hours of Instruction

Sec. 28. (a) Any student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or vocational cosmetology program in a public school in this state. A transcript showing the number and courses of completed hours certified by the school in which the instruction was given must be submitted to the executive director. Upon evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student desires a transfer that the stated hours and courses have been successfully completed and that the student is not required to repeat such instruction. Any student transferring completed hours of instruction into a vocational cosmetology program in a public school must also obtain the approval of the authorities in the school to which he is transferring.

(b) A private beauty culture school must furnish a student a transcript for the purpose of transfer under this section unless the student has not tendered the agreed tuition for the number of hours completed.

#### Student Work on Patrons

Sec. 29. (a) No school may receive compensation for work done by any student who has not completed 10 percent of the required number of hours for a license as provided by this Act.

(b) Each school shall maintain in a conspicuous place a list of the names and identifying pictures of the students who are qualified to work on a patron under Subsection (a) of this section.

(c) Any school violating this section shall pay to the commission a civil penalty of \$50

for each violation and shall be subject to revocation or suspension of its license.

#### Private Beauty Culture Schools and Beauty Shops

Sec. 30. Private beauty culture schools and beauty shops may not be conducted in the same quarters or on the same premises unless they are separated by walls of permanent construction with no openings in them.

#### Employment by Licensees

Sec. 31. (a) No private beauty culture school, wig school, or public school may employ a person holding an operator, manicurist, or wig specialist license solely to perform the practice or practices of cosmetology for which such person is licensed or employ a person holding an instructor or wig instructor license to perform any acts or practices of cosmetology other than to instruct a person in the practices of cosmetology or the care and treatment of wigs and artificial hairpieces, respectively.

(b) No licensee may operate a beauty salon or wig salon unless it is at all times under the direct supervision of a person holding an operator license or instructor license, or wig specialist or wig instructor license, respectively.

(c) No licensee may operate a private beauty culture school or wig school unless it is at all times under the direct supervision of an instructor licensed under this Act.

(d) No person holding a beauty salon or wig salon license may employ a person as an operator, manicurist, or wig specialist who has not first obtained a license under this Act.

#### Display of License

Sec. 32. Every holder of a license issued under this Act shall display the license in a conspicuous place in his principal office, place of business, or place of employment.

#### Right of Access

Sec. 33. The commission, an inspector, or any duly authorized representative of the commission may enter the premises of any licensee at any time during normal business hours and in such manner as not to interfere with the conduct or operation of the business or school to determine whether or not the licensee is in compliance with the provisions of this Act and the rules and regulations of the commission.

#### Examinations

Sec. 34. (a) Examinations shall be conducted in Austin on the first Tuesday of each month unless it is a legal holiday, in which case the examination shall begin on the following working day.

(b) No examination may be administered to an applicant who received his instruction in a private beauty culture school or wig school without certification from that school that the applicant has tendered, or has made arrangements to tender, the agreed tuition.

#### Health Certificates

Sec. 35. (a) Every applicant for an original or renewal manicurist, wig specialist, oper-

ator, instructor, wig instructor, or reciprocal license shall submit a certificate of health signed by a licensed physician, showing that the applicant is free from any contagious disease as determined by an examination which included a Wassermann test.

(b) Any physician who signs a health certificate required by Subsection (a) of this section showing the applicant to be free from any contagious disease without having made the physical examination shall be guilty of a misdemeanor and on conviction be fined not less than \$50 nor more than \$200.

#### Itinerant Shops

Sec. 36. The establishment of itinerant shops is prohibited. Any license granted under this Act shall permit the licensee to practice only in an establishment licensed under this Act or an establishment licensed under Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 734a, Vernon's Texas Penal Code).<sup>1</sup>

<sup>1</sup> Transferred; see, now, article 8407a.

#### Infectious and Contagious Diseases

Sec. 37. (a) No person holding a manicurist, operator, instructor, wig instructor, or wig specialist license may perform any practice of cosmetology knowing that he is suffering from an infectious or contagious disease.

(b) No person holding a beauty salon, wig salon, wig school, or private beauty culture school license may employ a licensee under this Act to perform any practice or practices of cosmetology knowing that the licensee is suffering from an infectious or contagious disease.

#### Renewal of Unexpired Licenses

Sec. 38. (a) All licenses issued under this Act except temporary licenses expire one year from the date of issue.

(b) Applications for renewal of an unexpired license must be filed at least 20 days prior to the expiration date of the license. Application shall be on a form prescribed by the commission.

(c) A renewal license shall be issued upon compliance with Subsection (a) and (b) of this section and payment of the renewal fee established by this Act.

(d) Notwithstanding Subsection (a) of this Section, renewal licenses issued by the commission from September 1, 1973, through September 1, 1974, may be issued for a period not to exceed 15 months. The license renewal fee shall be prorated based on the renewal fee provided in Section 40 of this Act for the number of months the renewal license issued under this subsection will be valid.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 38A. The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license

fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

#### Renewal of an Expired License

Sec. 39. (a) A license which has expired may be renewed within 30 days from the date of expiration by filing an application form prescribed by the commission, payment of the renewal fee provided by this Act, and payment of a \$5 delinquency fee.

(b) A license which has expired more than 30 days but less than five years from the date of application for renewal may be renewed. A renewal license shall be issued upon submission of an application form prescribed by the commission and payment of the renewal fee established by this Act for each year the license was expired without renewal.

(c) An applicant for renewal of a license which expired more than five years from the date of application for renewal shall be issued a renewal license on submission of an application on a form prescribed by the commission, payment of the examination fee, satisfactory completion of the examination administered for granting an original license, and payment of a \$25 reinstatement fee.

#### Renewal Fees

Sec. 40. The renewal fees for licenses issued under this Act are:

- (1) manicurist license—\$5;
- (2) operator license—\$5;
- (3) wig specialist license—\$10;
- (4) instructor license—\$15;
- (5) private beauty culture school license—\$150;
- (6) beauty shop license—\$10;
- (7) wig salon license—\$15;
- (8) wig school license—\$25; and
- (9) wig instructor license—\$15.

#### Violation

Sec. 41. (a) If an inspector discovers a violation of any provision of this Act or of the rules and regulations established by the commission, he shall give written notice of the violation on a form prescribed by the commission to the violator, and if the violation is not corrected within 30 days from the date of notice, the inspector shall file a complaint with the executive director.

(b) If a licensee commits three or more violations of a similar nature within any 12-month period, a suit for injunction under Section 45 of this Act and proceedings for suspension or revocation of the license shall be instituted.

#### Grounds for Denial, Suspension, or Revocation of Permit

Sec. 42. A license may be denied, or after hearing, suspended or revoked if the applicant or licensee has:

(1) been convicted of a felony involving moral turpitude or misdemeanor involving immoral conduct; the record of conviction is conclusive evidence of the named felony or misdemeanor;

(2) secured a license by fraud or deceit;

(3) violated or conspired to violate the provisions of this Act or rules and regulations issued pursuant to this Act;

(4) knowingly made false or misleading statements in any advertising of the licensee's services;

(5) advertised, practiced, or attempted to practice under the name or trade name of another licensee under this Act; or

(6) been found by the executive director to be an habitual drinker or addicted to the use of any narcotic drug.

#### Procedures for Denial, Suspension, or Revocation of License

Sec. 43. (a) Any person whose application for a license is denied is entitled to a hearing before the commission if he submits a written request to the executive director.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the executive director in writing and under oath. The charges may be made by any person or persons.

(c) The executive director shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail to the last known address of the licensee or applicant.

(d) At the hearing the applicant or licensee has the right to appear either personally or by counsel, or both, to produce witnesses, and to have subpoenas issued by the commission and to cross-examine opposing or adverse witnesses.

(e) The commission is not bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(f) The commission shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the commission shall be mailed to the applicant or licensee at his last known address by certified mail.

(g) On application, the commission may reissue a license to a person whose license has been cancelled or revoked, but the application may not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and the

application shall be made in the manner and form as the commission may require.

#### Procedures for Appeal

Sec. 44. (a) A person whose application for a license has been refused or whose license has been cancelled, revoked, or suspended by the commission make take an appeal, within 20 days after the order is entered, to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under the provisions of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

#### Injunction Proceeding

Sec. 45. (a) The attorney general or any district or county attorney may institute an injunction proceeding to enjoin any person from engaging in any practice of cosmetology without having complied with the provisions of this Act.

(b) A violator shall forfeit to the state \$25 per day as a penalty for each day's violation, to be recovered in a suit by the district or county attorney or attorney general.

(c) The venue for an injunction proceeding under this section is in the county of the residence of the person against whom the injunction proceeding is instituted.

#### Exemptions

Sec. 46. (a) The following are exempt from the provisions of this Act:

- (1) service in the case of an emergency;
- (2) persons licensed by this state to practice medicine, surgery, dentistry, chiropody, osteopathy, or chiropractic;
- (3) registered nurses; and
- (4) persons engaged in the business of or receiving compensation for makeup applications only.

(b) A person exempt from the provisions of this Act may nevertheless apply for a license under this Act, and upon issuance of a license becomes bound by all the provisions of this Act.

(c) Nothing in this Act shall be construed to include those persons lawfully engaged in barbering under Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 734a, Vernon's Texas Penal Code),<sup>1</sup> when so engaged in operating on male persons only, but such persons shall not be permitted to perform for compensation any of the practices of cosmetology as defined in Subdivision (3) of Section 1 of this Act on a female except in accordance with the provisions and requirements of this Act.

<sup>1</sup> Transferred; see, now, article 8407a.

#### Penalties

Sec. 47. (a) Any person who violates a provision of this Act except Section 35 is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

(b) Any licensee who violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable under Subsection (a) of this section and is subject to revocation or suspension of his license.

#### Issuance of Licenses on Effective Date of Act

Sec. 48. (a) On the effective date of this Act, any license issued by the State Board of Hairdressers and Cosmetologists remains valid but is subject to the renewal procedures established by this Act. Any person holding an operator license issued by the State Board of Hairdressers and Cosmetologists on the effective date of this Act may perform for compensation any practice of cosmetology defined in subdivision (3) of Section 1 of this Act.

(b) At the effective date of this Act, any person engaged in a practice of cosmetology not previously required to be licensed shall be issued a license upon submission of an application on a form prescribed by the commission and payment of the original license fee. No examination shall be required. Application for a license under this subsection must be made within 120 days from the effective date of this Act. Persons eligible for a license under this subsection are not subject to prosecution for violation of Section 12 of this Act until 120 days after the effective date of this Act.

#### Repealer

Sec. 49. Chapter 116, Acts of the 44th Legislature, Regular Session, 1935, as amended (Article 734b, Vernon's Texas Penal Code), is repealed.

#### Members of Initial Commission; Eligibility; Appointment

Sec. 50. In appointment to the initial commission, a person is eligible for appointment if he is entitled to receive a wig specialist, wig salon, wig school, or wig instructor license under Subsection (b) of Section 48 of this Act in lieu of the requirement of holding a valid wig specialist, wig salon, wig instructor, or wig school license. The governor shall appoint the members of the commission on the effective date of this Act.

Sec. 51. [Amends article 8407a, § 4].

#### Directors

Sec. 52. The Texas Cosmetology Commission shall appoint one member of the State Board of Hairdressers and Cosmetologists as of January 1, 1971, to serve as director of licensing, one member of the State Board of Hairdressers and Cosmetologists as of January 1, 1971, to serve as director of inspection, and one member of the State Board of Hairdressers and Cosmetologists as of January 1, 1971, to

serve as director of examination. These persons shall serve as directors until the expiration date of the terms for which they were appointed to the State Board of Hairdressers and Cosmetologists. Thereafter they may serve as directors at the pleasure of the commission.

Severability

Sec. 53. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Emergency

Sec. 54. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

Hair Cleansing and Scalp Conditioning

Sec. 55. (a) The Texas Cosmetology Commission shall establish a procedure within 30 days from the effective date of this Act whereby persons who have received at least 150 clock hours of training in hair cleansing and scalp conditioning at a vocational rehabilitation center or an approved school may receive certification from the Texas Cosmetology Commission after examination to perform the practice of hair cleansing and scalp conditioning.

(b) Certification under Subsection (a) of this section shall begin not later than January 1, 1974 and the issuance of original certification shall end on December 31, 1978. There shall be no more than 100 persons certified to engage solely in the practice of cosmetology for hair cleansing and scalp conditioning at any one time.

(c) To be eligible for certification each person must:

- (1) be at least 16 years of age;
- (2) have successfully completed a course in hair cleansing and scalp conditioning offered by a vocational rehabilitation center or an approved school;
- (3) make application for certification to the Texas Cosmetology Commission on application forms prescribed by the commission; and
- (4) possess a certificate of health as described in Section 35 of this Act.

(d) A vocational rehabilitation center or an approved school may offer the training for certification under this section if:

- (1) it has received written authorization to do so by the Texas Cosmetology Commission and by the Texas Education Agency;
- (2) it provides a course of training, supervision of trainees, and continuing evaluation of certificate holders; and

(3) it conducts classes in which there are not more than three trainees to each instructor during any class session.

(e) No person who holds a certificate issued under this section may be employed by a licensed beauty shop having fewer than three regular employees who hold valid operators licenses issued under this Act.

(f) Certificates shall be issued pursuant to the provisions of this section and shall continue in effect so long as the applicant or certificate holder:

(1) is determined by the Texas Cosmetology Commission to be mentally and physically capable of performing the duties of a person employed solely in the practice of cosmetology to cleanse hair or condition the scalp;

(2) makes annual application for certification renewal to the Texas Cosmetology Commission on forms prescribed by the commission; and

(3) possesses a certificate of health as described in Section 35 of this Act at the time of renewal.

(g) The Texas Cosmetology Commission shall continue to renew certificates after December 31, 1978 if the certificate holder meets the qualifications prescribed by Subsection (f) of this section.

[Acts 1971, 62nd Leg., p. 3389, ch. 1036, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 290, ch. 136, § 1, eff. May 18, 1973; Acts 1973, 63rd Leg., p. 581, ch. 250, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 627, ch. 266, § 20, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 637, ch. 270, §§ 1 to 3, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1388, ch. 536, § 1, eff. June 14, 1973.]

CHAPTER THREE. BOXING, SPARRING, WRESTLING, ETC.

Article	
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**Art. 8501-1. Supervision and Regulation of Boxing or Sparring Contests; Exemptions**

(a) The promoting, conducting or maintaining of fistic combat or wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purses or prize equivalent to be received by the participants or contestants, or where an admission fee thereto or therefor is charged or received, shall be lawful in Texas, except on Sunday, subject to such supervision by the Commissioner of Labor Statistics as such Commissioner possesses over theatres and employees thereof other than performers and under the further provisions hereof; provided, however, that any such contests conducted by educational institutions and/or Texas National Guard units and/or duly recognized amateur athletic organizations shall be exempt from the provisions of this Act as specified under Paragraph (b) of this section.

Sole jurisdiction and authority is hereby vested in the Commissioner of Labor to enforce the provisions of this Act regulating the promoting, conducting or maintaining of fistic combats, wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purse or prize equivalent to be received by the participants or contestants, or where an admission fee thereto or therefor is charged or received, and he is hereby given specific authority to promulgate such rules and regulations as shall become necessary in carrying out the purposes of this Act, and shall have the power of refusal of licenses or permits to boxers, wrestlers, managers, referees, matchmakers, timekeepers, seconds or promoters if after investigation applicant or applicants are found to be of questionable character or not entitled to same under the provisions of this Act. The definition of the words "boxer," "wrestler," "manager," "referee," "matchmaker," "timekeeper," "second," "promoter," together with the phrases "fistic combat," "wrestling match," "boxing contest" as used in this Act shall be accepted as defined by the National Boxing Association and the National Wrestling Association, and the rules governing ring regulations of boxing and wrestling contests or sparring contests or exhibitions, their seconds and referees shall be in accordance with those set out by the National Boxing Association and the National Wrestling Association. The definition of the phrases "Amateur Contestant" and "Amateur Contests" shall be that as set forth by the National Amateur Athletic Union.

If any person, firm or corporation be dissatisfied with any order, ruling or decision of said Commissioner, such aggrieved party may within thirty (30) days from the entry of such order, ruling or decision, appeal therefrom to the District Court of Travis County, Texas, and such Court may hear and determine such appeal, in term time or vacation, by trial de novo. If the aggrieved party shall prevail by final judgment, a certified copy thereof shall be presented to the Commissioner who shall com-

ply with the terms thereof upon the payment of all fees incurred under the terms of this Act.

(b) None of the provisions of this Act shall be applicable to and enforced against:

(1) All nonprofit amateur athletic associations chartered under the laws of the State of Texas including their affiliated membership clubs throughout the State for the promotion of amateur athletics.

(2) Any contests or exhibitions between students of such institutions which are conducted by any college, school or university as part of the institution's athletic program.

(3) Contests or exhibitions between members of such units which are conducted by any troop, battery, company or units of the Texas National Guard or Texas Defense Guard. Provided, none of the participants in such contests or exhibitions receive a money remuneration or purse or prize equivalent for their performance or services therein.

Every person, club, organization or association of persons conducting or sponsoring amateur boxing or wrestling contests, except those specifically exempted, where an admission fee is charged shall be subject to the tax provision of this Act and shall conduct all wrestling matches, fistic combats, boxing or sparring contests of amateur standing under the conditions specified hereinafter.

(1) The sanction and approval of the Commissioner of Labor Statistics shall be secured at least seven (7) days prior to date of tournaments or contests, and all entries shall be filed with said amateur organization three (3) days prior to date of the tournaments or contests.

(2) Such amateur organization shall have the responsibility of determining and sanctioning the amateur standing or status of each and every contestant who performs or appears in such amateur contests or tournaments.

(3) Such amateur organization shall not be required to secure a license to conduct or promote amateur contests approved by the Commissioner of Labor Statistics.

(4) Such contests shall be subject to the supervision of the Commissioner of Labor Statistics and all profits derived from such contests be used in the development of amateur athletics.

(5) No one shall be permitted to act as referee in amateur contests except a person holding a license or permit from the Commissioner of Labor Statistics.

(6) All contestants shall be examined by a licensed physician within a reasonable time before they enter or engage in contests, and a licensed physician shall be in attendance at the ringside during the full course of the contests or tournaments.

(7) No boxer, wrestler or manager licensed under this Act shall participate in any capacity during any amateur show or exhibition and said participation shall be deemed sufficient grounds for having his professional license suspended or revoked by the Commissioner of Labor Statistics.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 1; Acts 1943, 48th Leg., p. 33, ch. 31, § 1.]

#### Art. 8501-2. Deposit of Moneys From License and Other Fees

The Commissioner of the Bureau of Labor Statistics shall deposit all moneys received by him from license and all other fees under the provisions of this Act in the State Treasury to the credit of the General Revenue Fund of the State.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 2; Acts 1961, 57th Leg., p. 264, ch. 139, § 1, eff. Sept. 1, 1961.]

#### Art. 8501-3. Promoter Defined

Each individual, firm, club, copartnership, association, company or corporation which conducts any fistic combat, boxing, sparring or wrestling match, contest or exhibition is a "promoter" within the terms of this Act; provided, that no individual, firm, club, copartnership, association, company or corporation, nor any member, shareholder, stockholder, officer, agent or representative of any firm, copartnership, association, company or corporation shall in any manner, either directly or indirectly, act as a promoter as herein defined before or prior to such person, member, shareholder, stockholder, officer, agent or representative becoming and being a bona fide inhabitant and citizen of the State of Texas, and each such officer, agent or representative of any such firm, club, copartnership, association, company or corporation shall likewise be a bona fide inhabitant and citizen of the State of Texas, and any person who shall aid or abet any person in endeavoring to act as or become such promoter, and any person so acting without being so qualified shall be deemed guilty of felony swindling and shall be punished accordingly, and the charter or any other business permit of any organization whose officer or officers, agents or representatives shall be so convicted shall thereby be forfeited and their right to conduct such promotion or contests terminated.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 3.]

#### Art. 8501-4. Registration Fee of Promoter

Before any individual, firm, club, copartnership, association, company, or corporation may act as a promoter of either boxing or wrestling as herein defined, such promoter shall file or cause to be filed with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by him a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where promoter will operate, and such other information as may be required by

such printed forms when furnished, and the application filed with the Commissioner of Labor shall be accompanied with a registration or license fee, for which a permit or license may be issued by said Commissioner of Labor, for the type of license applied for, such remittance to be in such form as by law provided for other remittances to such officer, and such registration fee shall be Ten Dollars (\$10) for Boxing Promoters License and Ten Dollars (\$10) for Wrestling Promoters License in a city with a population not exceeding seven thousand, five hundred (7,500); Twenty Dollars (\$20) in cities with a population of seven thousand, five hundred and one (7,501) to seventeen thousand, five hundred (17,500) inclusive; Thirty Dollars (\$30) in cities with a population of seventeen thousand, five hundred and one (17,501) to twenty-five thousand (25,000), inclusive; One Hundred Dollars (\$100) in cities with a population of twenty-five thousand and one (25,001) to seventy-five thousand (75,000), inclusive; and Two Hundred Dollars (\$200) in a city of more than seventy-five thousand (75,000) inhabitants, and any person or group of persons acting as such promoter without so registering and remitting such license fee, and having in their possession a duly authorized permit, shall be deemed guilty of felony swindling and shall be punished accordingly.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 4; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 3; Acts 1941, 47th Leg., p. 625, ch. 377, § 1.]

#### Art. 8501-5. Bond by Promoter

Before any individual, firm, club, copartnership, association, company, or corporation may conduct, hold or give any fistic combat, match, boxing, sparring, or wrestling contest or exhibition, such promoter shall execute and file with the Commissioner of Labor a good and sufficient surety bond in the sum of Three Hundred Dollars (\$300) where the combat is to be held in a city of not more than seventy-five hundred (7500) population; Five Hundred Dollars (\$500) where the combat is to be held in a city with a population from seven thousand, five hundred and one (7,501) to seventeen thousand, five hundred (17,500), inclusive; Seven Hundred and Fifty Dollars (\$750) where the combat is to be held in a city whose population is between seventeen thousand, five hundred and one (17,501) and twenty-five thousand (25,000), inclusive; One Thousand Dollars (\$1,000) in cities whose population is in excess of twenty-five thousand (25,000), subject to the approval of the Commissioner and conditioned for the payment of the tax hereby imposed, said bond to be in form and kind required of an administrator of an estate in Texas, and the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other Court having jurisdiction, may institute suit upon such bond to recover any delinquent tax and the cost incurred in ascertaining the amount and recovery of such tax; provided, if such promoter conducts such contests or exhibitions as a continuing enter-

prise or promotion, such bond shall be annual in effect and continue in force until the last day of the fiscal year in which same is filed and approved and shall run concurrent with the time for which license is issued, unless default be made by the principal thereof or the sureties thereon become insufficient in the judgment of the Commissioner of Labor.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 5; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 4; Acts 1941, 47th Leg., p. 625, ch. 377, § 2.]

#### **Art. 8501-6. Report of Gross Receipts; Payment of Tax**

Each individual firm, club, copartnership, association, company or corporation which conducts any fistic combat, boxing, sparring or wrestling match, contest or exhibition wherein the contestants or participants receive a money remuneration, purse, or prize equivalent for their performance or services in same, and/or where an admission fee is charged or received, shall furnish to the Commissioner of Labor Statistics at Austin, Texas, within forty-eight (48) hours after the termination of such match, contest or exhibition, a duly verified report thereof showing the number of tickets sold, the various prices received therefor, and the amount of gross receipts for the total number of tickets sold therefor, and at the same time shall attach to the Commissioner of Labor's report legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for three per centum (3%) of the total gross receipts from the sale of tickets of admission to such contest, which tax shall be deposited to the credit of the "Boxing and Wrestling Enforcement Fund." No other fee or tax either general or local, than as herein provided, shall be assessed against or levied upon any such match, contest or exhibition, contestant or manager, or promoter thereof.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 6; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 5.]

#### **Art. 8501-7. Failure to Report Contest or Re-mit Gross Receipts Tax; Penalty**

Whenever any such individual, firm, club, copartnership, association, company or corporation shall fail to make a report of any contest in the manner and within the time prescribed by this Act, and to pay or remit the gross receipts tax due thereunder pursuant to the provisions of this Act, and for a period of twenty (20) days after notice thereof to such delinquent persons, firm, club, copartnership, association, company or corporation by the State Commissioner of Labor, such delinquent individual, firm, club, copartnership, association, company or corporation and/or the officers thereof shall be deemed guilty of the theft of such tax and punished accordingly; provided further, that whenever any such report is unsatisfactory to the State Commissioner of Labor he may, by Court of Inquiry, examine or cause to be examined the books and records of such individual, firm, club, copartnership, asso-

ciation, company or corporation, and may subpoena or cause to be subpoenaed and examine or cause to be examined, under oath, such individual, copartners, or the officers of such firm, club, association, company or corporation, and other persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest or contests and the amount of the tax due pursuant to the provisions of this Act, which tax he may, upon, and as the result of such examination, fix and determine, and in case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, if a greater sum than reported and paid is so determined to be due, for a period of twenty (20) days after notice by the Commissioner of Labor to such delinquent individual, firm, club, copartnership, association, company or corporation, such individual, copartners, or the officers of such firm, club, association, company or corporation shall be deemed guilty of the theft of such tax and punished accordingly.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 7.]

#### **Art. 8501-8. Registration of Boxer or Performer; Fee**

Before any person may perform or act as boxer, wrestler, or manager of such boxer or wrestler, or matchmaker for a promoter of boxing and wrestling contests or exhibitions, where such boxer, wrestler, manager, or matchmaker performs or renders service for money remuneration purse or prize equivalent, or may appear or perform without remuneration in contests with or on the same card with licensed contestants, such person shall file with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by him a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where and party with whom filed if other than with the Commissioner of Labor at Austin, Texas, as is herein provided, and such other information as may be required by such printed forms, and the application shall be accompanied with a license fee, such remittance to be in such form as by law provided for other remittances to such officer, and such license fee shall be Five Dollars (\$5) for each boxer or wrestler and Fifteen Dollars (\$15) for each manager of a boxer or wrestler, and Fifteen Dollars (\$15) for each matchmaker for a promoter of boxing and wrestling or otherwise for a boxer or wrestler; provided further that a license good for thirty (30) days only may, upon receipt of proper application, and when approved by the Commissioner of Labor, be issued to a boxer or a wrestler, for a fee of One Dollar (\$1). And it is further provided that each manager shall file with the Commissioner of Labor a copy of each and every contract entered into with a boxer or wrestler, and any person acting or performing without so registering and remitting such license fee shall be deemed guilty of

misdeemeanor swindling and shall be punished accordingly.

It is further provided that before any person may perform or act as second to a boxer or wrestler, or timekeeper at a boxing or wrestling contest, or referee of boxing and wrestling contests or exhibitions, such person shall file with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by said Commissioner, a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where and party with whom filed if other than with the Commissioner of Labor at Austin, Texas, as is herein provided, and such other information as may be required by such printed forms, and the application shall be accompanied with a license fee, such remittance to be in such form as by law provided for other remittances to such officer, and such license fee shall be Ten Dollars (\$10) for such referee; provided, however, that a deputy commissioner of labor may appoint a referee for a single boxing or wrestling combat, and issue the license therefor, and said license fee shall be One Dollar (\$1); and Two Dollars and Fifty Cents (\$2.50) for each second and timekeeper, provided, however, that a deputy labor commissioner may appoint said second and timekeeper and other necessary local officials for any single boxing or wrestling combat and issue a license therefor without charge; and provided further that adequate provisions shall be made for some person of proper authority present at the match to appoint a substitute for any referee, second, timekeeper, or any other officiating person who fails to present himself at the time of the bout; and provided further that any person acting in any of the above named capacities or performing without registering and remitting such license fees as are herein required shall be deemed guilty of misdemeanor swindling and shall be punished accordingly.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 8; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 6; Acts 1941, 47th Leg., p. 625, ch. 377, § 3.]

#### Art. 8501-9. Registration Fee for Year

All license fees herein provided shall be effective for one year after the date received or fixed as that of the first performance by the Commissioner of Labor Statistics, and a receipt for the license fee paid shall be evidence of the payment of same until said license is issued by the Commissioner of Labor Statistics; provided that any duly registered promoter may accept the application and license fee for such boxer, wrestler, manager, matchmaker, timekeeper, second or referee and issue his receipt therefor, and any duly registered promoter shall secure from such boxer, wrestler, manager, referee, matchmaker, timekeeper or second, who has not complied with Section 8 of this Act,<sup>1</sup> said registration or application and fee, and issue his receipt for the fee so collected, before permitting such boxer, wrestler, manager, referee, matchmaker, timekeeper or

second to perform, act or appear in contests staged by said promoter, which receipt shall be sufficient until such time as the Commissioner of Labor Statistics may issue such license, such promoter to be liable under the bond herein provided for the remittance of all application fees so collected, and failure to remit the same to the Commissioner of Labor Statistics within ten (10) days after the receipt thereof shall cause him to be deemed guilty of theft thereof and punished accordingly.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 9; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 7.]

<sup>1</sup> Article 8501-8.

#### Art. 8501-10. Exhibition Buildings Provided With Fire Exits

All the buildings or structures used for the purpose of conducting such fistic combat matches, boxing, sparring or wrestling contests or exhibitions shall be ventilated and provided with fire exits and fire escapes in such manner as by law provided for buildings where public gatherings are held and shall conform to all laws, ordinances and regulations pertaining to such buildings in the city, town or village where situated; provided, nothing herein contained is to be construed to prevent the holding of fistic combat matches, boxing, sparring or wrestling contests or exhibitions in the open air or tents.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 10.]

#### Art. 8501-11. Matters Prohibited

No individual, firm, club, copartnership, association, company or corporation shall:

(a) Hold or conduct any fistic combat match, boxing, sparring or wrestling contest or exhibition on Sunday; or,

(b) Knowingly permit any person under the age of eighteen (18) years to participate in any professional fistic combat match, boxing, sparring or wrestling contest or exhibition; or,

(c) Knowingly permit any person under the age of twenty-one (21) years<sup>1</sup> to participate in any professional championship fistic combat match, boxing, sparring or wrestling contest or exhibition; or,

(d) Permit any gambling or betting or wagering of any character on the result of, or any contingency in connection with any fistic combat match, boxing, sparring or wrestling contest or exhibition, either before or during any such contests; or,

(e) Knowingly conduct or give or participate in or permit any sham or fake fistic combat match, boxing, sparring or wrestling contest or exhibition except it be as a burlesque; or,

(f) Permit any contestant for or participant in any fistic combat match, boxing, sparring or wrestling contests or exhibition to enter the same unless such contestant first shall have been examined, within two (2) hours prior to entering the ring,

by a duly licensed and practicing physician who is a bona fide inhabitant and citizen of the State of Texas, nor then, if such physician finds the facts to be that such contestant is physically unfit to engage in such contest, and such physician shall so certify in writing if he finds the fact so to be, and the promoter of such contest shall deliver such report of examination to the Commissioner of Labor Statistics with the gross receipts tax report, and a duly licensed and practicing physician who is a bona fide inhabitant of the State of Texas shall remain in attendance during the entire time of such match, contest or exhibition; provided, in the event of an emergency in the nature of one or more of the contestants failing, refusing or otherwise being unable to perform as scheduled or agreed, nothing herein shall be construed to prevent the substitution of another contestant or contestants in place of those failing or refusing or being unable to perform as scheduled and any physical examination of a contestant required by this Act may thus be waived by such contestant upon the latter stating in writing that he is physically fit; or,

(g) Permit any fistic combat match, boxing or sparring contest or exhibition for more than ten (10) rounds duration, except in a championship match which shall not exceed fifteen (15) rounds; or,

(h) Permit one round of such match, contest or exhibition to extend for a longer period than three (3) minutes; or,

(i) Permit less than one minute intermission between each round; or,

(j) Permit any fistic combat match, boxing or sparring contest or exhibition without the use of padded gloves of standard make, weighing at least six (6) ounces each, or permit such gloves worn by each of the opposing contestants to be of other than equal weight; or,

(k) Knowingly sell or cause to be sold or issued for any fistic combat match, boxing, sparring or wrestling contest or exhibition more tickets or invitations or passes purporting to admit anyone to such match, contest or exhibition, or otherwise to admit to the same more persons than are admissible according to the authorized capacity of the building or the part thereof actually used for such purpose.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 11; Acts 1969, 61st Leg., p. 535, ch. 183, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

#### Art. 8501-12. Presence of Commissioner of Labor Statistics or Deputy in Counting Gross Receipts

The Commissioner of Labor or any Deputy Commissioner of Labor Statistics may be present at any boxing or wrestling show or exhibition and may inspect any and all forms or

documents to be executed as prescribed by this Act, and may assist in the counting of the gross receipts and the preparing of the report thereon as herein provided, and the original copy of such report together with physician's examination report shall be delivered or mailed to the General Office of the Commissioner of Labor, at Austin, Texas, by the Promoter.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 12; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 8.]

#### Art. 8501-13. False Swearing in Statement or Reports

Any person who in verifying or swearing to any statement or report required by this Act, makes or causes to be made therein any statement which is knowingly and wilfully false shall be deemed guilty of false swearing and punished accordingly.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 13.]

#### Art. 8501-14. Penalty

Any individual, copartner or officer of such firm, club, copartnership, association, company or corporation who violates any of the provisions of this Act, for which a penalty is not herein otherwise prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred and Fifty Dollars (\$250.00), and by the revocation of the license of such violator.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 14.]

#### Art. 8501-15. Partial Invalidity

In case any section or part of section of this Act shall be declared unconstitutional, it shall not affect the validity of the remainder.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 15.]

#### Art. 8501-16. Repeals

All laws or parts of laws in conflict with this Act are hereby in all things expressly repealed.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 16.]

#### Art. 8501-17. Commissioner of Labor to Provide Forms

The Commissioner of Labor shall have the full power and authority to make and issue such forms governing all reports he shall believe expedient and necessary in carrying out the purpose of this Act; provided further, that the terms of this Act shall be a part of any contract between the individual, firm, club, copartnership, association, company or corporation promoter hereunder and the contestants or managers of the contestants, whether such contract be oral, written or printed.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 17.]

#### Art. 8501-17a. Assignment of Contract for Exhibition Invalid

No contract or agreement for any exhibition or exhibitions under the term of this Act shall be transferred or assigned to any third person

and shall only be valid and enforceable as between the original parties thereto.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 17a.]

**Art. 8501-17b. Provisions Inapplicable to Amateur Nonprofit Contests for Entry Into National or Statewide Tournaments**

Resolved by the House of Representatives of the State of Texas, the Senate of the State of Texas concurring, That the Commissioner of Labor Statistics of the State of Texas and all other officers charged with the enforcement of the provisions of House Bill Number 832, Chapter 241, Acts of the Regular Session of the Forty-third Legislature,<sup>1</sup> be directed and they are hereby directed to refrain from enforcing the provisions of said Act as against any person, firm, or association of persons conducting any exhibition of wrestling or boxing not for profit, or the participants therein, where such participants are not receiving any remuneration, when such exhibition is held solely for the purpose of qualifying the participants therein to enter any statewide, national or olympic tournament, even though admission may be charged in order to defray the necessary expense of holding such exhibition.

[Acts 1933, 43rd Leg., 1st C.S., p. 382, H.C.R. No. 40.]

<sup>1</sup> Articles 8501-1 to 8501-17a.

**Art. 8501-17c. Commissioner of Labor to Promulgate Rules and Regulations and Revoke or Suspend Licenses**

The Commissioner of Labor is hereby empowered and it is hereby made his duty to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Law. Any such rules and regulations, however, which may be promulgated by the Commissioner of Labor before it shall become effective must be printed and filed as a public record in the office of the Commissioner of Labor, a copy of which shall be furnished by the Commissioner of Labor to any person applying therefor. The Commissioner of Labor is also vested and has the power and authority to revoke or suspend the license or permit of any boxer, wrestler, manager, referee, matchmaker, timekeeper, second or promoter for violation of any rule or regulation which may be promulgated by the Commissioner of Labor or for the violation of any provision of this Law wherein the penalty is not specifically provided. Said Commissioner of Labor is also to have the power and authority to forfeit the purse of any boxer, wrestler, manager or referee not to exceed Five Hundred Dollars (\$500.00) for the violation of any rule or regulation promulgated by the Commissioner of Labor or any provision of this Law wherein the penalty is not specifically provided, said moneys to be deposited to the credit of the "Boxing and Wrestling Enforcement Fund." Any person who may be affected by any penalty imposed by the Commission of Labor, or is dissatisfied with the same, shall

have the right to appeal to any District Court of Travis County, Texas; the trial shall be de novo and the procedure the same as other civil cases and upon such trial the Court shall have the same power as the Commissioner to impose the penalties herein provided for the violation of any reasonable rule of the Commissioner or any provision of this Act wherein a penalty is not specifically provided.

[Acts 1933, 43rd Leg., p. 843, ch. 241, § 17b; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 9.]

**CHAPTER FOUR. GASOLINE AND PETROLEUM PRODUCTS**

**Article**

- 8601. Sale Under Another Name.
- 8602. Shall Mark Containers.
- 8603. Labeling Receptacles or Reservoirs of Petroleum Products.
- 8604. Must Not Flash.
- 8605. Standard of Gasoline or Motor Fuel.
- 8606. Inferior Motor Fuel.
- 8607. Tests of Petroleum Products.
- 8608. Using Incorrect Measure.
- 8609. Breaking Seal on Incorrect Measure.
- 8610. Hindering Inspector.
- 8611. Punishment.

**Art. 8601. Sale Under Another Name**

No person, firm or corporation, shall sell gasoline, benzine, naphtha, or other similar product of petroleum, capable of being used for illuminating, heating or power purposes, under any other than the true name of said products; and such petroleum products shall be subject to inspection by the proper authorities.

[1925 P.C.]

**Art. 8602. Shall Mark Containers**

No person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naphtha or other highly inflammable substance made from petroleum, shall fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission, unless such regulations should conflict with the provisions of this chapter.

[1925 P.C.]

**Art. 8603. Labeling Receptacles or Reservoirs of Petroleum Products**

No person, firm, association of persons, corporation or carrier selling or transporting any gasoline, benzine, naphtha or other similar product of petroleum, shall fail to truly label in large letters showing the name of such person, firm, association of persons, corporation or carrier on any tank car, barrel, cask, tank wagon, receptacle or reservoir in which any petroleum product shall be shipped or stored within this State, or from which sales or delivery of the same are to be made.

[1925 P.C.; Acts 1933, 43rd Leg., p. 94, ch. 46, § 1; Acts 1935, 44th Leg., p. 396, ch. 154, § 1-a.]

**Art. 8604. Must Not Flash**

No person, firm, association of persons, or corporation shall sell or offer for sale any kerosene or distillate to be used for domestic cooking, illuminating, heating, or other domestic uses, having a flash point at a temperature below 112 degrees Fahrenheit, according to the United States official closed cup testing method of the United States Bureau of Mines.

[1925 P.C.; Acts 1935, 44th Leg., p. 396, ch. 154, § 1; Acts 1937, 45th Leg., p. 648, ch. 318, § 1.]

**Art. 8605. Standard of Gasoline or Motor Fuel**

(a) No person, firm, association of persons, or corporation shall sell, offer for sale, or expose for sale, or possess or store with the intention to sell, as gasoline or motor fuel, any substance, liquid, or product of petroleum which falls below the standard of gasoline or motor fuel, the minimum requirement of which such standard shall be determined by the following distillation range:

1. When the thermometer reads 167 degrees Fahrenheit not less than ten (10) per cent shall be evaporated.

2. When the thermometer reads 284 degrees Fahrenheit not less than fifty (50) per cent shall be evaporated.

3. When the thermometer reads 392 degrees Fahrenheit not less than ninety (90) per cent shall be evaporated.

4. The end or dry point of distillation must not be over 437 degrees Fahrenheit.

5. The residue shall not exceed two (2) per cent.

6. Sulphur shall not exceed twenty one hundredths (0.20) per cent.

(b) Motor fuel or gasoline shall be volatile hydro-carbon fuel, free from water and suspended matter, and shall be practicable and/or suitable for use as fuel in internal combustion engines.

[1925 P.C.; Acts 1933, 43rd Leg., p. 94, ch. 46, § 2; Acts 1935, 44th Leg., p. 396, ch. 154, § 2.]

**Art. 8606. Inferior Motor Fuel**

(a) Liquids, substances, or products of petroleum used, or intended for use, as gasoline or motor fuel, not meeting the minimum requirements and specifications prescribed in Article 1105<sup>1</sup> hereof for gasoline or motor fuel, shall be known and designated as "Inferior Motor Fuel," and all pumps, receptacles, tanks or containers from which such inferior motor fuel may be sold, offered for sale, or exposed for sale, or in which such inferior motor fuel is stored, or transported with the intention to sell, shall be labeled, in plain, legible lettering in the English language in the full view of the public, with the words "Inferior Motor Fuel," which such lettering shall be of solid black type not less than two (2) inches in height with not less than one-half inch paint stripe of black oil paint on white oil paint background;

and it is further provided that any person who shall sell or exchange any such motor fuel shall be required to plainly show on each and every invoice, manifest, ticket or bill of exchange that the commodity sold or exchanged is inferior motor fuel.

(b) No person, firm, association of persons or corporation shall sell or offer for sale as lubricating oil, any oil that has been rerun, refiltered, reclaimed or refined from crank case draining or any other oil that has been theretofore used for purposes of lubrication, unless the said oil is sold as and labeled "Reconditioned Motor Oil". The words "Reconditioned Motor Oil" shall be plainly and legibly printed on each container, which said lettering shall be imprinted in two (2) places on the container or label in a manner that said lettering will appear both on the front and back surface of the container when displayed to the public in sale displays, and which said lettering shall be in letters of not less than three-sixteenths ( $\frac{3}{16}$ ) of an inch in height and not less than one-sixteenth ( $\frac{1}{16}$ ) of an inch in the width of each line used to form said letters.

(c) No person, firm, association of persons or corporation shall sell at retail, or offer for sale at retail, as gasoline or motor fuel to propel motor vehicles upon the roads, streets and highways of Texas, either alone or when blended with other products, any unrefined liquid, substance or residuum of natural gas formed in and extracted or expelled in its natural state from any pipe line or tank conveying or containing natural gas, unless the said liquid, substance or residuum sold at retail or offered for sale at retail in its unrefined state is labelled as "Drip Gasoline," and all pumps, receptacles, tanks or containers of any retail service station through which such drip gasoline may be sold or offered for sale to propel motor vehicles upon the roads, streets and highways of Texas, either alone or when blended with other products, shall be labelled in plain, legible lettering in full view of the public, with letters of solid black type not less than two (2) inches in height and one half ( $\frac{1}{2}$ ) inch in width with the words "Drip Gasoline." Provided that nothing herein shall be construed as requiring the labelling of any derivative of natural gas which has been refined into an appropriate blending material free of dirt, oil and other suspended matter.

[1925 P.C.; Acts 1933, 43rd Leg., p. 94, ch. 46, § 3; Acts 1935, 44th Leg., p. 396, ch. 154, § 3; Acts 1951, 52nd Leg., p. 148, ch. 88, § 1; Acts 1955, 54th Leg., p. 1038, ch. 393, § 1.]

<sup>1</sup> Transferred; see, now, article 8605.

**Art. 8607. Tests of Petroleum Products**

The apparatus and methods of conducting all tests and arriving at proper standards of gasoline and other products under this Act shall be those now or hereafter authorized and used by the U. S. Bureau of Mines.

[1925 P.C.]

**Art. 8608. Using Incorrect Measure**

No person, firm, association of persons, corporation or carrier, shall use any scales, measure or measuring device in the handling or sale of petroleum products unless the same is true and accurate according to the standard of weights and measures under the laws of this State nor use any pumping device unless the same is correct according to such standard at three speeds, fast, slow and medium.

[1925 P.C.]

**Art. 8609. Breaking Seal on Incorrect Measure**

The inspector shall seal and forbid the use of any inaccurate measuring device until such time as the defect is corrected. The breaking of said official seal shall be prima facie evidence of a violation of this law and no person, firm, association of persons, corporation or carrier shall refuse to permit the inspector provided for by law to inspect and seal, if deemed necessary, any such measuring device, or to break the seal after being placed by such inspector.

[1925 P.C.]

**Art. 8610. Hindering Inspector**

The Director of the Food and Drug Division of the State Board of Health, his inspectors, or any duly authorized representative appointed by the State Comptroller for that purpose, or any highway patrolman, or sheriff, or deputy sheriff, or any other peace officer shall have, in the performance of his duties under this law, the power to inspect any premises or place where petroleum products are made, prepared, stored, transported, sold or offered for sale or exchange, take samples of same, and test measuring devices. It shall be unlawful for any person to hinder or obstruct or refuse to permit said inspectors or any other persons duly authorized to perform said duties in the exercise of such powers.

[1925 P.C.; Acts 1933, 43rd Leg., p. 94, ch. 46, § 4.]

**Art. 8611. Punishment**

Any person who shall knowingly violate any of the provisions of Articles 1101 through and inclusive of Article 1110 of the Penal Code shall be guilty of a misdemeanor; and upon conviction shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

[1925 P.C.; Acts 1935, 44th Leg., p. 396, ch. 154, § 4.]

## CHAPTER FIVE. COMMODITY EXCHANGES

**Article**

- 8651. Definitions.
- 8652. Future Contracts Valid.
- 8653. Future Contracts Invalid.
- 8654. Bucket Shop Defined and Prohibited.
- 8655. Shall Furnish Copy of Contract.
- 8656. Penalty.
- 8657. Permitting Exchanges.
- 8658. Repealer.
- 8659. Severability.

**Art. 8651. Definitions**

That for the purpose of this Act, the term "Contract of Sale" shall be held to include sales, purchases, agreements of sale, agreements to sell, and agreements to purchase; that the word "person" wherever used in this Act shall be construed to import the plural or singular as the case demands, and shall include individuals, associations, partnerships, and corporations.

[1925 P.C.]

**Art. 8652. Future Contracts Valid**

All contracts of sale for future delivery of cotton, grain, stocks, or other commodities, (1) made in accordance with the rules of any board of trade, exchange, or similar institution, and (2) actually executed on the floor of such board of trade, exchange, or similar institution, and performed or discharged according to the rules thereof, and (3) when such contracts of sale are placed with or through a regular member in good standing of a cotton exchange, grain exchange, board of trade, or similar institution, organized under the laws of the State of Texas or any other State, shall be and they hereby are declared to be valid and enforceable in the courts of this State, according to their terms; provided, that contracts of sale for future delivery of cotton in order to be valid and enforceable as provided herein, must not only conform to the requirements of clauses 1 and 2 of this section, but must also be made subject to the provisions of the United States Cotton Futures Act, approved August 11, 1916, and any amendments thereto; provided, further, that if this clause should for any reason be held inoperative, then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirements of clauses 1 and 2 of this section; provided further, that all contracts as defined in Section 1 hereof where it is not contemplated by the parties thereto that there shall be an actual delivery of the commodities sold or bought shall be unlawful.

[1925 P.C.]

**Art. 8653. Future Contracts Invalid**

Any contract of sale for future delivery of cotton, grain, stocks, or other commodities where it is not the bona fide intention of parties that the things mentioned therein are to be delivered but which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange, or other similar institution, without any actual bona fide execution and the carrying out of such contract upon the floor of such exchange, board of trade or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this State, and no action shall be maintainable thereon at the suit of any party.

[1925 P.C.]

**Art. 8654. Bucket Shop Defined and Prohibited**

A bucket shop is hereby defined to be and mean any place of business wherein are made contracts of the sort or character denounced by the preceding Section 3 of this Act,<sup>1</sup> and the maintenance or operation of a bucket shop at any point in this State is prohibited.

[1925 P.C.]

<sup>1</sup> Article 8653.

**Art. 8655. Shall Furnish Copy of Contract**

Every person shall furnish upon demand to any principal for whom such person has executed any contract for the future delivery of any cotton, grain, stocks, or other commodities, a written instrument setting forth the name and location of the exchange, board of trade, or similar institution, upon which such contract has been executed, the date of the execution, of the contract, and the name and address of the person with whom such contract was executed, and if such person shall refuse or neglect to furnish such statement upon reasonable demand, such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Art. 658,<sup>1</sup> and that the person who executed it was engaged in the maintenance and operation of a bucket shop, within the provisions of Article 661 hereof.<sup>2</sup>

[1925 P.C.]

<sup>1</sup> See, now, article 8653.

<sup>2</sup> See, now, article 8656.

**Art. 8656. Penalty**

Any person, either as agent or principal, who enters into or assists in making any contracts of sale of the sort or character denounced in the preceding Art. 658<sup>1</sup> for the future delivery of cotton, grain, stocks, or other commodities, or who maintain a bucket shop, as that term is defined in Art. 659,<sup>2</sup> shall be guilty of a felony, and upon conviction, shall be imprisoned in the penitentiary not exceeding two years.

[1925 P.C.]

<sup>1</sup> See, now, article 8653.

<sup>2</sup> See, now, article 8654.

**Art. 8657. Permitting Exchanges**

There may be organized in any city, town, or municipality in the State of Texas, voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade, or similar institutions, to receive and post quotations on cotton, grain, stocks, or other commodities, for the benefit of its members and other persons engaged in the production of cotton, grain, or other commodities. Such associations shall be composed of members and shall adopt a uniform set of rules and regulations not incompatible with the laws of Texas and of the United States. They shall open their books to inspection of all proper courts and officers when required so to do.

[1925 P.C.]

**Art. 8658. Repealer**

Articles 536 and 537 of Chapter 2, Title 11, and Articles 538 to 547 inclusive of Chapter 3, Title 11, of the Revised Penal Code of the State of Texas, of 1911, and all laws and parts of laws regulating or prohibiting dealings in future contracts, or in conflict or inconsistent herewith, be and the same are hereby repealed.

[1925 P.C.]

**Art. 8659. Severability**

If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect,<sup>1</sup> impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, or paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered; and any contract valid under and satisfying the remaining clauses, sentences, paragraphs, or parts of this Act shall be valid and enforceable in the courts of this State.

[1925 P.C.]

<sup>1</sup> So in enrolled bill; should probably read "affect".

[Chapters 6 to 19 reserved for future expansion]

**CHAPTER TWENTY. MISCELLANEOUS****Article**

- 9001. Sale of Goods on Both the Two Consecutive Days of Saturday and Sunday.
- 9002. Mass Gatherings Act.
- 9003. Outdoor Music Festivals; Regulation; Registration of Promoters.
- 9004. Shipping Articles Without Inspection.
- 9005. Restricting Work of Foreign Crew.
- 9006. Unlawfully Throwing Ballast.
- 9007. Sale of Merchandise Made by Convicts or Prisoners Prohibited; Exceptions.
- 9008. Tickets; Sale at Price in Excess of Purchase Price Without License Prohibited.
- 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper and Brass Materials.
- 9010. Peddling of Printed Matter by Deaf or Mute Persons.
- 9011. Going Out of Business Sales.
- 9012. Reproduction for Sale, or Sale or Offer for Sale, of a Sound Recording Without Owner's Consent.
- 9013. Tattooing.
- 9014. Tampering With Manufacturer's Identification Number.
- 9015. Regulating Dealing in Used Pipe Line and Oil and Gas Equipment.
- 9016. Furnishing False Credit Information to or by a Credit Reporting Bureau.
- 9017. Permit to Sell, License, etc., for Public Performance for Profit Under Blanket License of Copyrighted Dramatic or Musical Compositions.

**Art. 9001. Sale of Goods on Both the Two Consecutive Days of Saturday and Sunday**

Prohibition of Sales; Items; Misdemeanor

Sec. 1. Any person, on both the two (2) consecutive days of Saturday and Sunday, who

sells or offers for sale or shall compel, force or oblige his employees to sell any clothing; clothing accessories; wearing apparel; footwear; headwear; home, business, office or outdoor furniture; kitchenware; kitchen utensils; china; home appliances; stoves; refrigerators; air conditioners; electric fans; radios; television sets; washing machines; driers; cameras; hardware; tools, excluding non-power driven hand tools; jewelry; precious or semi-precious stones; silverware; watches; clocks; luggage; motor vehicles; musical instruments; recordings; toys, excluding items customarily sold as novelties and souvenirs; mattresses; bed coverings; household linens; floor coverings; lamps; draperies; blinds; curtains; mirrors; lawn mowers or cloth piece goods shall be guilty of a misdemeanor. Each separate sale shall constitute a separate offense.

**Sales for Charitable and Funeral or Burial Purposes;  
Real Property Sales**

Sec. 2. Nothing herein shall apply to any sale or sales for charitable purposes or to items used for funeral or burial purposes or to items sold as a part of or in conjunction with the sale of real property.

**First Offense; Subsequent Convictions; Penalties**

Sec. 3. For the first offense under this Act, the punishment shall be by fine of not more than One Hundred Dollars (\$100.00). If it is shown upon the trial of a case involving a violation of this Act that defendant has been once before convicted of the same offense, he shall on his second conviction and on all subsequent convictions be punished by imprisonment in jail not exceeding six (6) months or by a fine of not more than Five Hundred Dollars (\$500.00), or both.

**Purpose; Public Nuisances; Injunction; Application  
and Proceedings**

Sec. 4. The purpose of this Act being to promote the health, recreation and welfare of the people of this state, the operation of any business whether by any individual, partnership or corporation contrary to the provisions of this Act is declared to be a public nuisance and any person may apply to any court of competent jurisdiction for and may obtain an injunction restraining such violation of this Act. Such proceedings shall be guided by the rules of other injunction proceedings.

**Emergency Purchases; Certification**

Sec. 4a. Repealed by Acts 1967, 60th Leg., p. 79, ch. 39, § 1, eff. Aug. 28, 1967.

**Occasional Sales**

Sec. 5. Occasional sales of any item named herein by a person not engaged in the business of selling such item shall be exempt from this Act.

**Legislative Intent**

Sec. 5a. It is the intent of the Legislature that Articles 286 and 287 of the Penal Code of

Texas<sup>1</sup> are not to be considered as repealed by this Act; provided, however, that the provisions of said Articles shall not apply to sales of items listed in Section 1 of this Act which are forbidden to be sold on the day or days named in this Act.

[Acts 1961, 57th Leg., 1st C.S., p. 38, ch. 15, eff. Nov. 7, 1961; Acts 1967, 60th Leg., p. 79, ch. 39, § 1, eff. Aug. 28, 1967.]

<sup>1</sup> Now repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), enacting the new Texas Penal Code.

**Art. 9002. Mass Gatherings Act**

**Short Title**

Sec. 1. This Act may be cited as the Texas Mass Gatherings Act.

**Definitions**

Sec. 2. In this Act:

(1) "Mass gathering" means any meeting or gathering held outside the limits of an incorporated city which attracts or can be expected to attract more than 5,000 persons who will remain at the location of the gathering for a period of more than 12 continuous hours.

(2) "Issuing officer" means the county judge in the county in which a mass gathering is to be held.

(3) "Promoter" means any person, group of persons, firm, corporation, partnership, or association that organizes, promotes, manages, finances, or holds a mass gathering.

**Prohibition**

Sec. 3. No person may act as a promoter of a mass gathering in this state unless he obtains a permit from the issuing officer under the provisions of this Act. If the owner of the property on which the mass gathering will be held is not the promoter as defined in Section 2, subsection (3), the owner of the property shall not be required to obtain a permit under the provisions of this Act.

**Application for Permit**

Sec. 4. (a) At least 45 days before a mass gathering is to be held, the promoter of the mass gathering shall file with the issuing officer an application for a permit.

(b) The application shall include the following:

(1) the name and address of the promoter;

(2) a financial statement reflecting all funds which are being supplied to finance the mass gathering and who supplied them;

(3) the name and address of the owner of the property on which the mass gathering is to be held and a certified copy of the agreement made between the promoter and the owner of the property;

(4) the location and a description of the property on which the mass gathering is to be held;

(5) the dates and the times that the mass gathering will be held;

(6) the number of persons the promoter will allow to attend the mass gathering and the plan which the promoter intends to use to limit attendance to this number;

(7) the names and addresses of the performers who have agreed to appear and their agents and a description of any agreements reached with these performers;

(8) a description of all steps taken by the promoter to assure that minimum standards of sanitation and health will be maintained during the mass gathering;

(9) a description of all preparations being made to provide traffic control and to assure that the mass gathering will be conducted in an orderly fashion and that the physical safety of the persons in attendance will be protected;

(10) a description of the preparations made to provide adequate medical and nursing care; and

(11) a description of the preparations made to supervise minor persons who may attend the mass gathering.

#### Investigation

Sec. 5. (a) After an application is filed with the issuing officer, he shall send copies to the county health officer and the sheriff.

(b) The county health officer shall inquire into preparations for the mass gathering and at least five days before the hearing shall submit a report to the issuing officer stating whether or not he believes that the minimum standards of health and sanitation provided by state and local laws, rules, regulations, and orders will be maintained.

(c) The sheriff shall investigate preparations for the mass gathering and at least five days before the hearing shall submit a report to the issuing officer stating whether or not he believes that minimum standards provided by state and local laws, rules, regulations, and orders for assuring public safety and order will be maintained.

(d) The issuing officer may conduct any additional investigation which he considers necessary.

(e) The county health officer and the sheriff shall be available to give testimony relating to their reports at the hearing.

#### Hearing

Sec. 6. (a) The issuing officer shall set a date and a time for a hearing on the application which shall be held at least 10 days before the day on which the mass gathering is to begin.

(b) Notice of the time and place of the hearing shall be given to the promoter and to any persons who have an interest in the granting or denial of the permit.

(c) At the hearing, any person may appear and testify for or against the granting of the permit.

#### Findings of Issuing Officer

Sec. 7. (a) After the hearing is completed, the issuing officer shall enter his findings in the record and shall grant or deny the permit.

(b) The issuing officer may deny the permit if he finds that:

(1) the application contains false or misleading information or required information is omitted;

(2) the financial backing of the promoter is insufficient to assure that the mass gathering will be conducted in the manner stated in the application;

(3) the location selected for the mass gathering is inadequate for the purpose for which it is to be used;

(4) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minor persons attending the mass gathering;

(5) the promoter does not have assurance that performers who are scheduled to appear will appear;

(6) the preparations for the mass gathering do not assure that minimum standards of sanitation and health will be maintained or that the mass gathering will be conducted in an orderly fashion and the physical safety of persons in attendance will be protected, or that adequate supervision of minor persons will not be provided;

(7) adequate arrangements for traffic control have not been provided; or

(8) adequate medical and nursing care will not be available.

#### Revocation of Permit

Sec. 8. (a) After a permit is issued, if the issuing officer finds that preparations for the event will not be completed by the time the mass gathering is to begin or that the permit has been obtained by fraud or misrepresentation, he may revoke the permit.

(b) The issuing officer must give notice to the promoter 24 hours in advance of the revocation, and hold a hearing on the revocation if requested by the promoter.

#### Appeal

Sec. 9. Any promoter or person affected by the action of the issuing officer in granting, denying, or revoking a permit under this Act may appeal to a district court for the county in which the mass gathering is to be held.

#### Rules and Regulations

Sec. 10. (a) The State Department of Health shall promulgate rules and regulations relating to minimum standards of health and sanitation to be maintained at mass gatherings.

(b) The Texas Department of Public Safety shall promulgate rules and regulations relating to minimum standards which must be maintained to protect public safety and maintain order at a mass gathering.

(c) Before any rule or regulation is issued under this section, the department issuing the rule or regulation shall give notice and hold a public hearing.

**Penalty**

Sec. 11. Any person who violates the provisions of Section 3 of this Act is guilty of a misdemeanor and on conviction is punishable by confinement in the county jail for not more than 90 days or by a fine of not more than \$1,000, or both.

[Acts 1971, 62nd Leg., p. 1107, ch. 240, eff. Aug. 30, 1971.]

**Art. 9003. Outdoor Music Festivals; Regulation; Registration of Promoters**

**Definitions**

Sec. 1. In this Act:

(1) "Outdoor music festival" and "event" mean any form of musical entertainment provided by live performances occurring on two or more consecutive days or on two days in any three-day period if:

(A) more than 5,000 persons are in attendance at any one performance;

(B) any of the performers or any of the audience are not within a permanent structure; and

(C) the performance occurs outside the boundaries of an incorporated city.

(2) "Promoter" means any person who attempts to organize, promote, or solicit funds for the organization or promotion of an outdoor music festival.

**Prohibited Acts**

Sec. 2. (a) No person may act as a promoter of an outdoor music festival in this state without first having registered with the county clerk of the county in which the event is to be held.

(b) No person may direct or control or participate in the direction or control of an outdoor music festival unless a valid permit for the event has been issued as provided in this Act.

**Registration of Promoters**

Sec. 3. (a) A promoter of an outdoor music festival shall register with the county clerk of the county where the event is to be held.

(b) The registration form must include:

(1) the name and address of the promoter;

(2) the names and addresses of the promoter's associates and employees who are assisting in the promotion of the outdoor music festival; and

(3) a statement as to whether or not the promoter or any of his associates or em-

ployees have ever been convicted of any crime involving the misappropriation of funds, theft, burglary, or robbery.

(c) A registration fee of \$5 must be submitted with the registration form.

(d) The application must be verified by the promoter and be based on his best information and belief.

**Application for Permit**

Sec. 4. (a) A promoter desiring to hold an outdoor music festival in this state shall file a permit application with the county clerk of the county in which the event is to be held.

(b) The application must be filed at least 60 days before the day the event is to be held.

(c) The application must include:

(1) the name and address of the promoter and the names and addresses of all associates and employees of the promoter assisting in the promotion of the event;

(2) a financial statement of the promoter and a statement specifying from whom capital for the event is being supplied and in what amounts;

(3) a description of the place where the event is to be held;

(4) the name and address of the owner of the place where the event is to be held and a statement describing the terms and conditions of the agreement whereby the promoter is authorized to use the land;

(5) the dates and times that the event is to be held;

(6) the maximum number of persons that the promoter will allow to attend the event and a statement showing how the promoter plans to control the number of persons in attendance at the event;

(7) a description of the promoter's agreements with performers who are scheduled to appear at the event; and

(8) a full and complete statement describing the promoter's preparations for the event to comply with the minimum standards of sanitation and health as prescribed by Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes).

(d) The application for the permit must be verified by the promoter and be based on his best information and belief.

(e) A filing fee of \$5 must be submitted with the application for a permit.

**Health Report**

Sec. 5. (a) On the filing of an application for a permit, the county clerk shall forward a copy of the application to the county health officer.

(b) The county health officer shall make a written report to the commissioners court. The report shall state whether or not the county

health officer believes that the preparations described in the application would, if carried out, be sufficient to protect the community and the persons attending the music festival from health dangers and to avoid violations of Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes).

(c) The report of the county health officer shall be filed with the county clerk no later than two days before the day of the hearing on the permit application.

(d) The county health officer shall be present at the hearing on the permit application and may be called to testify by any person having an interest in the permit.

#### Hearing

Sec. 6. (a) The commissioners court shall set a date and time for a hearing on the application for a permit. The hearing may be held not later than 30 days before the day set for the first performance of the event and not earlier than 15 days after the day the application is filed.

(b) The promoter is entitled to 10 days' notice prior to the day of hearing.

(c) Any person may appear at the hearing and give testimony for or against the granting of the permit.

#### Denial of Permit; Grounds

Sec. 7. (a) A permit for an outdoor music festival shall be granted to an applicant by the commissioners court unless the court finds from a preponderance of the evidence presented at the hearing that:

(1) false or misleading information is contained in the application or required information is omitted;

(2) the promoter does not have sufficient financial backing or stability to carry out the preparations specified in the application or to insure the faithful performance of his agreements;

(3) the preparations specified in the application are insufficient to protect the community or the persons attending the event from health dangers or to avoid violations of Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes);

(4) the times and place for the event create a substantial danger of congestion and disruption of other lawful activities in the immediate vicinity of the event;

(5) the preparations specified in the application are insufficient to limit the number of persons in attendance at the event to the maximum number stated in the application; or

(6) the promoter does not have adequate agreements with performers to insure with reasonable certainty that persons advertised to perform will in fact appear.

(b) A finding under Subsection (a) of this section requires a majority vote of the commissioners court.

#### Permit

Sec. 8. A permit, if issued, shall authorize the promoter to hold an outdoor music festival at a specified place and at specified times.

#### Revocation of Permit

Sec. 9. (a) At any time prior to five days before the day of the first performance of the event, the commissioners court may, after reasonable notice to the promoter and a hearing, revoke the permit on a finding by a majority of the court that the preparations for the event will not be completed in time for the first performance and that the failure to carry out the preparations will result in a serious threat to the health of the community or the persons attending the event.

(b) A permit is irrevocable during the period between five days before the day of the first performance of the event and the final day of the event.

#### Appeal

Sec. 10. (a) A person affected by an action of the commissioners court in granting, denying, or revoking a permit for an outdoor music festival may appeal by filing a petition in the district court of the county where the commissioners court presides.

(b) The action of the commissioners court shall be reviewed under the substantial evidence rule.

(c) An appeal under this section does not suspend any action of the commissioners court unless suspension is ordered by the district court.

#### Penalties

Sec. 11. Any person who violates the provisions of Section 2 of this Act is guilty of a misdemeanor and on conviction is punishable by confinement in the county jail for not more than 30 days or by a fine of not more than \$1,000 or by both.

[Acts 1971, 62nd Leg., p. 1867, ch. 552, eff. June 1, 1971.]

#### Art. 9004. Shipping Articles Without Inspection

Whoever shall export from this State, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which by any law of this State may be required to be inspected by a public inspector without having caused said inspection to be made according to law, shall be fined not exceeding one hundred dollars.

[1925 P.C.]

#### Art. 9005. Restricting Work of Foreign Crew

Any officer, sailor, or member of the crew of a foreign seagoing vessel who shall engage in working on the wharves or levees of ports in this State beyond the end of the vessel's tackle

shall be fined not less than ten nor more than one hundred dollars or be imprisoned in jail not less than ten nor more than thirty days, or both.

[1925 P.C.]

**Art. 9006. Unlawfully Throwing Ballast**

If any part of the ballast of any vessel shall be thrown from such vessel into the sea within six miles of any bar or harbor in this State, the master or officer in charge thereof at the time shall be fined not less than one hundred nor more than two hundred dollars.

[1925 P.C.]

**Art. 9007. Sale of Merchandise Made by Convicts or Prisoners Prohibited; Exceptions**

Sec. 1. It shall be unlawful for any person, firm, partnership, association, or corporation to sell or offer for sale within the State of Texas any goods, wares, or merchandise manufactured wholly or in part by convicts or prisoners in penal or reformatory institutions, except convicts or prisoners on parole or probation, and provided further that nothing in this Section shall be construed to forbid or prohibit the sale of such goods produced or manufactured in the prison institutions of this State to the State, or to any political subdivision thereof, or to any public institution owned or managed and controlled by the State or any subdivision thereof.

Sec. 1(a). The Texas Department of Corrections is hereby authorized to contract with other states, the federal government, or foreign governments for the purpose of manufacturing license plates for the above mentioned governments.

Sec. 2. Any person, firm, partnership, association, or corporation which shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) for the first offense, and not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each subsequent offense.

[Acts 1941, 47th Leg., p. 107, ch. 86; Acts 1973, 63rd Leg., p. 807, ch. 362, § 1, eff. June 12, 1973.]

**Art. 9008. Tickets; Sale at Price in Excess of Purchase Price Without License Prohibited**

Sec. 1. Every person who sells, or offers to sell, any ticket or tickets to any sports event, amusement, or entertainment in the State of Texas for which an admission charge is made, in excess of the price for said ticket or tickets as printed thereon, shall be required, before being authorized to do so, to procure a license to engage in such activity on application therefor to the Comptroller of Public Accounts of the State of Texas. Such application shall be

in writing on forms prescribed by said Comptroller of Public Accounts and shall be verified by the applicant. The application shall state the name, post office address, residence, and citizenship of the applicant, and contain such other information as shall be required by the Comptroller of Public Accounts. Such application shall be examined by the Comptroller of Public Accounts and if he finds that it complies with the law and that the applicant is entitled to a license, he shall issue such license and deliver same to the applicant upon the payment by the applicant of an annual license fee of Two Hundred and Fifty Dollars (\$250). Such license shall run for a period of one year from the date of its issuance.

Sec. 2. The Comptroller of Public Accounts shall not be authorized to issue any license required by this Act to any firm, partnership, association, or corporation in the name of such firm, partnership, association, or corporation; such license may be issued only in the individual name of any officer, member, agent, servant, or employee of any firm, partnership, association, or corporation which officer, member, agent, servant, or employee may in any manner sell, or offer to sell, any ticket or tickets to any sports event, entertainment or amusement in the State of Texas for which an admission charge is made, in excess of the price for said ticket as printed thereon. An individual application and payment of the license fee as required in Section 1 of this Act shall be required of each officer, member, agent, servant, or employee of any firm, partnership, association, or corporation, which shall, for and on behalf of, or as agent for, such firm, partnership, association, or corporation, engage in the activities regulated by this Act.

Sec. 3. All license fees collected from the issuance of licenses required herein shall be paid into the General Fund of the State of Texas.

Sec. 4. Whoever shall sell, or offer for sale, either as an individual or as an officer, member, agent, servant, or employee of any firm, partnership, association, or corporation, any ticket or tickets to any sports event, amusement or entertainment in the State of Texas for which an admission charge is made, in excess of the price for said ticket as printed thereon, without first having procured a license therefor as required by this Act, shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be imprisoned in the county jail not to exceed one year or both. Each sale or attempt to sell any ticket or tickets without such license shall be a separate offense.

Sec. 5. If any section or provision of this Act shall be held invalid for any reason, the remainder of this Act shall not be in anywise affected.

[Acts 1941, 47th Leg., p. 490, ch. 307.]

**Art. 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper and Brass Materials**

**Definitions**

Sec. 1. As used in this Act,

(1) "copper or brass material" means either hard-drawn or soft-drawn copper wire or cable of the type used by public utilities or common carriers, or copper or brass pipe or fittings, or any combination of these;

(2) "secondhand metal dealer" means junk dealer, auto wrecker, scrap metal processor, or any other person purchasing, gathering, collecting, soliciting or traveling about from place to place procuring scrap metal or junk, or any person operating, carrying on, conducting or maintaining a scrap metal or junk yard or place where scrap metal or junk is gathered together or kept for shipment, sale, or transfer.

**Duty to Maintain Record; Exhibition; Form and Contents**

Sec. 2. (a) Every secondhand metal dealer in this state shall keep a written record of all sales to and purchases from any individual or private person of copper or brass material in excess of 50 pounds made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States.

(b) The record shall be in the English language in written form and shall include:

(1) the place and date of each sale to or purchase from an individual or private person of copper or brass material in excess of 50 pounds made in the conduct of his business;

(2) the name and address of each individual or private person from whom copper or brass material in excess of 50 pounds is purchased or obtained, and the license number of any motor vehicle used in transporting such copper or brass material to the secondhand metal dealer's place of business;

(3) a description of the article or articles of copper or brass material sold or purchased and the quantity thereof.

**Preservation of Records**

Sec. 3. Every secondhand metal dealer shall preserve the records required by Section 2 of this Act for a period of at least two years after making the entry of any purchase or sale of copper or brass material in excess of 50 pounds.

**Reports; Mailing**

Sec. 4. Every secondhand metal dealer shall, within seven days after the purchase or other acquisition of any copper or brass material in excess of 50 pounds, mail to or file with the Department of Public Safety a report con-

taining the information required to be recorded in Section 2 of this Act.

**Violations; Penalties**

Sec. 5. A secondhand metal dealer who violates any provision of this Act or who fails to comply with any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by confinement in the county jail for not more than 60 days, or by both.

**Exempt Purchases and Sales**

Sec. 6. All purchases made from any person or firm which sells or disposes of copper or brass material as an ordinary and usual part of its business, or from any person or firm which is engaged in business as a secondhand metal dealer, shall be exempt from Section 3 hereof, provided the purchaser obtains a bill of sale from the seller at the time of the purchase.

[Acts 1967, 60th Leg., p. 1049, ch. 460, eff. June 12, 1967.]

Sections 7 and 8 of the act of 1967 provided:

"Sec. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only."

**Art. 9010. Peddling of Printed Matter by Deaf or Mute Persons**

It shall be unlawful for any person to peddle or use a finger alphabet card or other printed matter stating in effect that the person is deaf and/or mute, in a manner calculated to play upon the sympathy of another in the solicitation of a contribution or donation. Any person violating any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than sixty (60) days or by a fine of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50), or by both imprisonment and fine.

[Acts 1959, 56th Leg., p. 1066, ch. 487, § 1.]

**Art. 9011. Going Out of Business Sales**

Sec. 1. That the term "going out of business sale" shall mean any offer to sell to the public or sale to the public of goods, wares and merchandise on the implied or direct representation by word of mouth or written or oral advertising that such sale is in anticipation of the termination of a business at its present location.

Sec. 2. It shall be unlawful for any person, firm, or corporation, to fraudulently represent that he is conducting a "going out of business sale."

Sec. 3. To conduct a "going out of business sale," any person, firm, or corporation shall file a sworn itemized inventory with the assessor and collector of taxes of the city or county, which has jurisdiction of his location, together

with a filing fee of \$2. Said sworn inventory shall include the following:

(1) Name and address of the owner of the goods, wares or merchandise to be sold.

(2) The name and address of the owner of the defunct business, the former stock in trade of which is to be offered for sale, and the full name of such defunct business.

(3) A description of the place where the liquidation sale is to be held.

(4) The commencement and termination date of the liquidation sale.

(5) A complete and detailed inventory of the goods, wares, and merchandise to be offered at the liquidation sale if the owner is conducting said sale in his own name, or such information in the form of a copy of an itemized and descriptive bill of sale from the owner of the defunct business sold to any other person conducting the liquidation sale to be sold at such sale. Upon receipt thereof by the assessor and collector of taxes of the city or county, the applicant should be issued a permit for "going out of business sale" for 120 days. If at the expiration of the 120 days of the original permit the applicant has not terminated his business, he shall file with the assessor and collector of taxes of the city or county an inventory reflecting the remaining merchandise which shall include the information as stated in the original application and the assessor and collector of taxes of the city or county shall upon the receipt thereof and a renewal fee of \$2 issue a renewal permit for 120 days; provided, however, that at the expiration of the first permit and any subsequent renewal an amended inventory stating any additional items, not included in the original inventory initially filed, which have been offered for sale shall be filed with the authority which received the initial inventory.

Sec. 4. The provisions of this Act shall not apply to any sale conducted by a public officer as part of his official duties, to any sale, an accounting of which must be made to a court of law, or to any sale conducted pursuant to an order of a court of law. Any sale under a foreclosure pursuant to a deed of trust or other lien shall not be included in this Act.

Sec. 5. Any person violating any provisions of this Act shall, upon conviction, be fined in the sum of not less than \$200, and each separate day's violation shall constitute a separate offense.

[Acts 1967, 60th Leg., p. 1003, ch. 434, eff. Aug. 28, 1967.]

**Art. 9012. Reproduction for Sale, or Sale or Offer for Sale, of a Sound Recording Without Owner's Consent**

Sec. 1. As used in this Act, "owner" means the owner of the master recording, master disc,

master tape, master film, or other device used for reproducing recorded sound on a phonograph record, disc, tape, film, or other material on which sound is recorded and from which the transferred recorded sound is directly or indirectly derived.

Sec. 2. A person commits a misdemeanor punishable by a fine not to exceed \$2,000 if he:

(1) knowingly reproduces for sale any sound recording without the written consent of the owner of the original recording; or

(2) sells or offers for sale any sound recording that he knows has been reproduced without the written consent of the owner of the original recording.

Sec. 3. A second offense under this Act shall be a felony punishable by a fine of not more than \$25,000, or imprisonment for not more than five years, or both.

Sec. 4. The provisions of this Act shall not apply to any fees due ASCAP.

[Acts 1971, 62nd Leg., p. 2730, ch. 890, eff. Aug. 30, 1971.]

Section 5 of the 1971 act provided: "The provisions of this Act are hereby declared to be severable. Should any portion hereof be declared unconstitutional or ineffective for any reason, such declaration shall not affect the remaining provisions hereof, and the Legislature specifically declares that it would have passed the balance of this Act notwithstanding the omission of any part thereof declared to be unconstitutional or ineffective."

**Art. 9013. Tattooing**

Sec. 1. It shall be unlawful to tattoo any person under the age of twenty-one (21) years.

Sec. 2. "Tattooing" means the practice of marking the skin with indelible patterns or pictures by making punctures and inserting pigments.

Sec. 3. Any person who violates the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars (\$10) nor more than two hundred dollars (\$200), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 847, ch. 409.]

**Art. 9014. Tampering With Manufacturer's Identification Number**

Any person who removes, alters, or obliterates the manufacturer's identification number on any personal property, other than a motor vehicle, with intent to prevent identification of the property or any person who possesses any personal property, other than a motor vehicle, with knowledge that the manufacturer's identification number has been removed, altered, or obliterated for the purpose of preventing its identification commits a misdemeanor punishable by a fine not to exceed \$200 or by confinement in jail for not more than 90 days or by both.

[Acts 1971, 62nd Leg., p. 3367, ch. 1029, § 1, eff. June 15, 1971.]

### Art. 9015. Regulating Dealing in Used Pipe Line and Oil and Gas Equipment

#### Definitions

Sec. 1. (a) That "Pipe Line Equipment" is hereby defined to be all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance and operation of any pipe line for the transportation of oil, gas, water or other liquid or gaseous substance.

(b) "Oil and Gas Equipment" is hereby defined to be equipment and materials which are part of, or incident to, the development, maintenance and operation of oil and gas properties. Included in this definition is equipment and materials which are part of, or incident to the construction, maintenance and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(c) "Pipe Line Equipment, Oil and Gas Equipment" shall be classed as "used materials", after such equipment has once been placed into the use for which the same was first manufactured and intended.

The term "used materials" shall mean any used pipe line equipment or oil and gas equipment as defined by this Act.

#### Definitions

Sec. 2. (a) "Person" shall mean and include persons, firms, partnerships, companies, corporations, associations, common law trusts, statutory trusts and other concerns by whatever name known or howsoever organized, formed or created.

(b) "Dealer" shall mean and include every person engaged in buying, selling, or otherwise dealing in used materials and who has a fixed, designated place, or places of business, within the State.

(c) "Broker" shall mean and include every person engaged in buying, selling, or otherwise dealing in used materials, as agent for the seller of such used materials, or as agent for the buyer of such used materials, or as agent for both.

(d) "Peddler" shall mean and include every person who is not a dealer or broker, and who is engaged in the buying, selling or otherwise dealing in used materials.

(e) "Owner" shall mean and include every person who owns or acquires used materials, and which is intended to be employed or is being employed in the business of such person as an incident thereto and is not owned or acquired for the purpose of resale.

(f) "Yard" shall mean the place where any dealer stores used materials, or keeps the same for the purpose of sale.

#### Bill of Sale, Necessity and Requisites

Sec. 3. Every dealer, broker or peddler as herein defined shall before purchasing any used materials, at any time after the effective

date of this Act, require a bill of sale for such used materials to be executed and acknowledged by the seller in the manner required by law for registration thereof containing the name and address of such dealer, broker or peddler, the serial number, if any, the kind, make, size, weight, length and quantity of the used materials so purchased, the date of the purchase, if different from the date of the bill of sale, the name and address of the seller, and the place of location of such property at the time purchased or acquired.

#### Act Inapplicable to Purchases Under \$25.00

Sec. 4. The provisions of this Act shall not apply where the reasonable market value of purchases made is less than Twenty-five (\$25.00) Dollars.

#### Penalty

Sec. 5. Every person, dealer, peddler or broker who violates any of the provisions of this Act shall be guilty of a misdemeanor and upon a conviction, shall be subject to a fine of not less than Ten (\$10.00) Dollars or more than Fifty (\$50.00) Dollars. The Attorney General of this State or any District Attorney or County Attorneys of this State shall be, and is hereby authorized and empowered to enjoin in the name and behalf of the State of Texas any dealer, peddler or broker from continuing in said business in the State of Texas upon violation of any of the provisions of this Act.

[Acts 1937, 45th Leg., p. 827, ch. 405.]

### Art. 9016. Furnishing False Credit Information to or by a Credit Reporting Bureau

Sec. 1. As used in this Act "credit reporting bureau" means a person or organization engaging in the practice of assembling or reporting credit information on individuals for the purpose of furnishing such information to third parties.

Sec. 2. Any person who knowingly furnishes false information regarding another person's credit worthiness, credit standing, or credit capacity to a credit reporting bureau is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$200.

Sec. 3. Any credit reporting bureau who knowingly furnishes false information regarding a person's credit worthiness, credit standing, or credit capacity to a third party is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$200.

[Acts 1971, 62nd Leg., p. 3051, ch. 1012, eff. Aug. 30, 1971.]

### Art. 9017. Permit to Sell, License, Etc., for Public Performance for Profit Under Blanket License of Copyrighted Dramatic or Musical Compositions

#### Annual Permit Required

Sec. 1. Before any person shall sell, license, or otherwise dispose of any performing rights of any copyrighted musical or dramatic-musical composition to be exercised in this

state under a blanket license such person shall first procure an annual permit to be known as a "Permit to Dispense Performing Rights Under a Blanket License" from the State Comptroller of Public Accounts for such privilege.

#### Definitions

Sec. 2. As used in this Act:

(1) "Person" means any individual, resident, or nonresident, of this state, and every domestic or foreign or alien partnership, society, association or corporation;

(2) "Performing rights" mean public performance for profit, including broadcasts by radio or television of any musical or dramatico-musical composition;

(3) "User" means any person who directly or indirectly performs or causes to be performed in this state any musical or dramatico-musical composition for profit. Each member of a system or network through whom is presented to the public any performing rights is a user;

(4) "Blanket license" includes any device whereby public performance for profit is authorized of the combined copyrights of two or more owners of any musical or dramatico-musical composition;

(5) "Blanket royalty or fee" includes any device whereby prices for performing rights are not based on the separate performance of individual copyrights.

#### Fee for Permit

Sec. 3. (a) Permits to Dispense Performing Rights Under a Blanket License must be issued to eligible applicants by the State Comptroller of Public Accounts, in a form prescribed by the State Comptroller.

(b) The annual fee for a Permit to Dispense Performing Rights Under a Blanket License shall be Fifty Dollars (\$50.) if less than ten (10) users are authorized to operate in this state by the holder of the permit; One Hundred Fifty Dollars (\$150.) if ten (10) or more but less than one hundred (100) users are authorized to operate in this state by the holder of the permit; and Two Hundred Fifty Dollars (\$250.) if one hundred (100) or more users are authorized to operate in this state by the holder of the permit. The fee must, in all cases, be based on the number of users in that month during the year preceding the effective date of the permit in which the permit holder or applicant authorized the greatest number of users to operate in this state. The fee must be paid before the permit is issued. All fees collected under this Act must be deposited by the Comptroller in the State Treasury to the credit of the General Revenue Fund.

(c) Initial permits may be acquired by an eligible applicant at any time, and are valid until the first day of April following issuance. The fee for initial permits shall be that fraction of the applicable annual fee formed by dividing

the number of days the initial permit is valid by three hundred sixty-five (365). Renewal permits must be obtained annually between the last day of February and the first day of April of each year, and are valid for one (1) year, beginning on the first day of April following issuance.

#### Copy of Blanket License Filed With Secretary of State

Sec. 4. Any person issuing a blanket license for performing rights in this state shall file with the Secretary of State, along with such person's initial or renewal application for a Permit to Dispense Performing Rights Under a Blanket License as required under this Act, a form copy of each type of blanket license then in effect in this state together with the affidavit of such person giving a list of all users holding each type of blanket license and the rates charged to each.

#### Registration Statement, Filing With Secretary of State; Designation of Agent for Service of Process

Sec. 5. Every person, whether incorporated or not, before issuing any blanket license for performing rights to any user to be exercised within this state, shall first file with the Secretary of State a registration statement giving (1) its correct corporate name if incorporated or, if not incorporated, the name under which it issues or intends to issue such blanket licenses to users for exercise in this state, (2) its Post Office address, and (3) the name and address of a registered agent in this state, which registered agent shall be an individual who is a resident of this state. There shall be filed with such registration statement a Power of Attorney designating such registered agent as its agent for service of process, which Power of Attorney shall be irrevocable except by the filing of a new Power of Attorney with the Secretary of State designating a new, duly qualified agent for service of process. The person filing such registration statement and Power of Attorney, whether incorporated or not, may, after filing same, sue or be sued in the courts of this state in the name given in such registration statement for the purpose of enforcing for or against it any substantive right; and any process, notice, or demand required or permitted by law to be served on such person in any suit, proceedings, or cause of action pending or hereafter filed in this state in which said person is a party or is to be made a party may be served on said registered agent.

#### Filing Registration Statement and Power of Attorney Required for Issuance of Permit

Sec. 6. No permit to Dispense Performing Rights Under a Blanket License shall be issued unless the registration statement and Power of Attorney required by Section 5 of this Act are on file with the Secretary of State.

#### Obligations of Existing Contract Unimpaired

Sec. 7. Nothing contained in this Act shall be so construed as to impair or affect the obli-

gation or any contract or license which was lawfully entered into before the effective date of this Act.

Filing Complaint for Violations; Misdemeanor; Penalty

Sec. 8. The State Comptroller may file a complaint against any person failing to comply with or who violates any provision of this Act.

Any person who has failed to comply with any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Hundred Dollars (\$500.) nor more than One Thousand Dollars (\$1,000.).

[Acts 1957, 55th Leg., p. 746, ch. 307; Acts 1961, 57th Leg., p. 890, ch. 391, §§ 1 to 5.]

# TITLE 133

## SAFETY

### Article

9201. Flammable Liquids; Storage, etc., at Service Stations.  
9202. Covering and Plugging Well or Cistern.  
9203. Refrigerators or Air-tight Containers.  
9204. Life Preservers.  
9205. Regulation and Offenses as to Fireworks.  
9206. Water Safety Act.  
9206a. Operating Motor Boat While Intoxicated.

### Art. 9201. Flammable Liquids; Storage, etc., at Service Stations

#### Definitions

Sec. 1. As used in this Act and in the rules and regulations promulgated pursuant to this Act:

(1) "Person" means individual, firm, association, corporation, or other private entity.

(2) "Board" means the State Board of Insurance.

(3) "Flammable liquid" means any liquid having a flash point below 140° Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100° Fahrenheit, but does not include liquefied petroleum gases.

(4) "Retail service station" means that portion of property where flammable liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale.

(5) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle, and are stored or blended in bulk for the purpose of distributing such liquids by tank car, tank vehicle, or container.

#### Rules and Regulations

Sec. 2. (a) The State Board of Insurance shall formulate, adopt, and promulgate rules and regulations for the safe storage, handling and use of flammable liquids at retail service stations within the scope provided by Sections 4, 5 and 6 of this Act.

(b) The rules and regulations shall be in substantial conformity with applicable provisions of the published standards of the National Fire Protection Association, in effect as of the effective date of this Act, covering the storage, handling, and use of flammable liquids at retail service stations.

(c) Nothing in this Act or the rules and regulations promulgated pursuant to this Act shall in any manner be interpreted as prohibit-

ing, or permitting the prohibition of, self-service gasoline station operations, so long as such stations require an attendant to be on the premises.

(d) In addition to other authority granted by this Act, the State Board of Insurance shall formulate, adopt, and promulgate rules and regulations for the safe movement and operation of mobile service units and for the safe dispensing of flammable liquids by mobile service units. As used in this Act, and in the rules promulgated hereunder, "mobile service units" are vehicles, tank trucks, or other mobile devices from which flammable liquids used as motor fuels may, as an act of retail sale, be dispensed into the fuel tanks of motor vehicles parked on off-street parking facilities; provided that any city may, by ordinance, within one hundred eighty (180) days after promulgation by the State Board of Insurance of State-wide regulations hereunder, adopt rules and regulations covering such units which are more restrictive but not less restrictive than those adopted by the State Board of Insurance hereunder and in addition thereto any city may license and charge a reasonable license fee for the operation of each such mobile service unit operating in such city. The rules and regulations promulgated under this Act shall have uniform force and effect throughout the State and no municipality or county shall hereinafter enact or enforce any ordinance, rules or regulations inconsistent with the rules and regulations promulgated hereunder except as provided herein. Provided, however, that any municipal or county ordinances, rules or regulations in force and effect on the effective date of this Act, including the prohibition of mobile service units, shall not be invalidated because of any provision of this Act.

#### Enforcement

Sec. 3. The state fire marshal, county fire marshals, and city fire marshals shall enforce the provisions of this Act and the rules and regulations adopted by the State Board of Insurance under the supervision of the board.

#### Storage Tanks

Sec. 4. (a) Flammable liquids shall not be stored at retail service stations in tanks of more than 60 gallons gross capacity above the surface of the ground. Underground flammable liquid tanks at retail service stations shall not be limited in individual or combined capacities or sizes.

(b) Retail service stations may be operated in conjunction with bulk plants having above-ground storage tanks provided there are separate underground tanks of not less than 550

gallons capacity each for final storage and dispensing of flammable liquids into fuel tanks of motor vehicles, and provided further that any piping connecting bulk plant storage tanks with underground tanks at the retail service station is equipped with a valve kept closed and locked other than when filling the underground tanks and within control of the operator of the retail service station. Aboveground tanks at bulk plants operated in conjunction with retail service stations on the same or contiguous properties shall be equipped with emergency vents of types and capacities provided by standards of the National Fire Protection Association.

#### Transitional Rules

Sec. 5. The rules and regulations shall be made allowing reasonable provision under which facilities in service prior to the effective date of the rules and regulations and not in strict conformity therewith may be continued in service provided they do not constitute a distinct hazard to life or property. For guidance in enforcement, the rules and regulations may delineate those types of nonconformities that should be considered distinctly hazardous and those nonconformities which should be evaluated in the light of local conditions. The rules and regulations shall provide that reasonable notice be given to the person owning the facility affected of intention to evaluate the need for compliance and the time and place at which he may appear and offer evidence thereon.

#### Hearings on Rule Changes

Sec. 6. (a) No rule or regulation shall be promulgated, amended, or repealed until after a public hearing.

(b) Written notice shall be given at least 20 days in advance of the hearing by certified mail to any interested person having registered his name and mailing address with the state fire marshal. The notice shall include the text or a summary of the substance of each rule or regulation to be considered.

(c) No rule or regulation may be made effective until a certified copy of the rule or regulation has been filed with the secretary of state.

(d) The board shall make copies of the rules and regulations available to interested persons on payment of a reasonable fee to cover the cost of publication.

#### Vehicle Regulations

Sec. 7. The size and weight of and load carried by vehicles used in the transportation or delivery of flammable liquids from any point of origin to any point of destination shall not be limited other than in accordance with applicable provisions of the motor vehicle and highway laws of the state and any municipal or county ordinance, rule or regulation in force and effect on the effective date of this Act.

#### Inconsistent Local Regulations

Sec. 8. The provisions of this Act and the rules and regulations promulgated under this Act shall have uniform force and effect throughout the state and no municipality or county shall hereinafter enact or enforce any ordinances, rules or regulations inconsistent with the provisions of this Act or rules and regulations promulgated pursuant to this Act. Provided, however, that any municipal or county ordinances, rules or regulations in force and effect on the effective date of this Act shall not be invalidated because of any provision of this Act.

#### Declaratory Relief to Test Validity of Rules

Sec. 9. A person affected or aggrieved by any rule or regulation promulgated under this Act may sue in a district court of Travis County for a declaratory judgment as to the validity of the rule or regulation or the validity of its application to him. Process shall be served on the attorney general and the commissioner of insurance. The provisions of the Uniform Declaratory Judgments Act (Article 2524-1, Vernon's Texas Civil Statutes) apply to the extent they may be made applicable.

Provided that no provision of this Act shall prevent any person affected or aggrieved by any municipal or county ordinance, rule or regulation referred to hereinabove in force and effect on the effective date of this Act from seeking a judicial determination as to the validity or constitutionality of such ordinance, rule or regulation or the validity of this application to such person under the rules of this State.

#### Violations

Sec. 10. A person engaged in the business of storing, selling, or other handling of flammable liquids, who violates any rule or regulation promulgated under this Act is guilty of a misdemeanor and upon conviction is punishable by confinement in the county jail for not more than 60 days or by a fine of not more than \$1,000, or by both. A separate offense is committed each day a violation continues.

#### Civil Penalties

Sec. 11. (a) In addition to or in lieu of the criminal penalties provided by Section 10 of this Act, a person who violates any rule or regulation promulgated under this Act is liable to a civil penalty not to exceed \$100 for each day of the violation.

(b) The civil penalty is recoverable in a district court of:

- (1) Travis County;
- (2) the county where the defendant resides; or
- (3) the county where the violation occurs.

(c) At the request of the board, the attorney general shall institute and conduct a suit in the name of the State of Texas to recover the penalty.

**Injunction**

Sec. 12. (a) Whenever it appears that a person is violating or threatening to violate any rule or regulation promulgated under this Act, the board may bring suit against the person in a district court of the county in which the violation or threat of violation occurs, to restrain the person from continuing the violation or carrying out the threat of violation. The attorney general shall represent the board when requested to do so.

(b) In any suit under this section, the court may grant the board, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, temporary injunctions, and permanent injunctions.

(c) Either party may appeal as in other civil cases.

**Effective Dates**

Sec. 13. Regulations of the board may not be made effective before January 1, 1970. Otherwise, this Act takes effect September 1, 1969.

[Acts 1969, 61st Leg., p. 1692, ch. 550, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1074, ch. 226, § 1, eff. Aug. 30, 1971.]

**Art. 9202. Covering and Plugging Well or Cistern**

Sec. 1. It shall be unlawful for the owner or operator of any well or cistern, as much as ten (10) feet deep, and not less than ten (10) inches nor more than six (6) feet in diameter to fail to keep it entirely covered at all times with a covering capable of sustaining weight of not less than two hundred (200) pounds, except when said well or cistern is in actual use by the owner or operator thereof.

Sec. 1a. It shall be unlawful for any person who shall drill, dig or otherwise create, or cause to be drilled, dug or otherwise created, any well or hole of as much as ten (10) feet in depth and less than ten (10) inches in diameter to abandon said well or hole without first completely filling said well or hole from its total depth to the surface or plugging the same with a permanent type plug at a depth of not less than ten (10) feet from the surface and completely filling the same from said plug to the surface.

This Act does not modify or repeal any existing laws.

Sec. 2. Any person violating the provisions of this Act shall upon conviction be guilty of a misdemeanor and be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500).

[Acts 1949, 51st Leg., p. 509, ch. 281.]

**Art. 9203. Refrigerators or Air-tight Containers**

Sec. 1. It shall be unlawful for any person to place or permit to remain outside of any dwelling, building, or other structure, or within any warehouse or storage room or any unoc-

cupied or abandoned dwelling, building, or other structure, under such circumstances as to be accessible to children, any ice box, refrigerator, or other airtight or semi-airtight container which has a capacity of one and one-half (1½) cubic feet or more and an opening of fifty (50) square inches or more and which has a door or lid equipped with a latch or other fastening device capable of securing such door or lid shut.

Sec. 2. Any person violating this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Five Dollars (\$5) nor more than Two Hundred Dollars (\$200), and each act done in violation hereof and each day that such violation continues shall constitute a separate offense and be punishable as such.

[Acts 1954, 53rd Leg., 1st C.S., p. 69, ch. 30, eff. April 22, 1954.]

**Art. 9204. Life Preservers**

**Rented Boats to Have Life Preservers; Exception as to Portion of River Near Bay, Inlet or Gulf Waters**

Sec. 1. It shall be unlawful for any person, firm, corporation or group of persons to rent or let for hire any boat upon any of the lakes or rivers of this State without having such boat equipped with at least one (1) life preserver for each person aboard. Provided however, the provisions of this Act shall not apply to that portion of a river within ten (10) miles of any bay, inlet, or gulf waters into which said river flows.

**Life Preserver Defined**

Sec. 2. For the purpose of this Act, the term "life preserver" shall mean any apparatus, device or object designed for and capable of floating, supporting or buoying up the body of an adult in the water.

**Enforcement**

Sec. 3. Game Wardens and all Peace Officers with the exception of Constables shall enforce the provisions of this Act.

**Punishment for Violations**

Sec. 4. Any person, firm, corporation or group of persons violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon the first conviction shall be punished by a fine of not less than Five Dollars (\$5) nor more than Twenty-five Dollars (\$25). Any person who is subsequently convicted under the provisions of this Act, shall for the second offense, be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100); and for all subsequent convictions thereafter such persons shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200).

**Effective Date**

Sec. 5. This Act shall be effective from and after June 15, 1951.

## Gulf of Mexico

Sec. 6. Provisions of this Act shall not apply to the Gulf of Mexico.

## Caddo Lake

Sec. 7. Nothing herein shall apply to the part of Caddo Lake situated in Marion County.

## Partial Unconstitutionality

Sec. 8. If any portion of this Act shall be held unconstitutional by any court of competent jurisdiction, the remaining provisions hereof shall, nevertheless, be valid the same as if the portion held unconstitutional had not been adopted by the Legislature as a part of this Act.

[Acts 1951, 52nd Leg., p. 297, ch. 176.]

Section 9 of the Act of 1951 repealed conflicting laws or parts of laws to the extent of the conflict.

### Art. 9205. Regulation and Offenses as to Fireworks

## Definitions

Sec. 1. As used in this Act the following terms, unless otherwise clearly indicated by the context, shall have the meanings specified below:

"ICC-Class C Common Fireworks"—Those fireworks specifically defined in Section 2 of this Act and not otherwise;

"Manufacturer"—Persons, firms, corporations or associations that are engaged in the making of fireworks;

"Distributor"—Those who sell fireworks to retailers or to jobbers for resale to others;

"Jobbers"—Those who purchase fireworks for resale to retailers only;

"Retailers"—Those who purchase fireworks for resale to consumers only;

"Chief Fire Prevention Officer"—The chief of the fire department, if in a city that has a fire chief, or if in the county, the chief fire enforcement officer primarily responsible in the county for the enforcement of fire prevention acts whether same be the sheriff, the constable or any other local enforcement officer;

"Public Display"—The igniting and shooting of fireworks for public amusement for a fee;

"State Fire Marshal"—The chief law enforcement officer of the State of Texas charged with the responsibility of fire prevention;

"Importer"—Those who import fireworks from a foreign country for sale to distributors, jobbers or retailers within the State of Texas;

"Salesmen"—An individual employed by a factory, distributor or jobber who takes orders for fireworks from distributors, jobbers or retailers;

"Class A Fireworks"—Those fireworks defined in Section 10 of this Act and not otherwise;

"Class B Fireworks"—Shall include all types of dangerous fireworks excepting fireworks designated as ICC Class C Common Fireworks and Class A Fireworks.

## Possession for Sale or Sale; Permissible Fireworks

Sec. 2. It shall be unlawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the State of Texas, any fireworks other than the permissible fireworks herein enumerated.

Permissible fireworks, as that term is used in this Act, shall be understood to mean ICC Class C Common Fireworks only and shall include only those fireworks enumerated as ICC Class C Common Fireworks in the regulations of the Interstate Commerce Commission, as said regulations are presently constructed, for the transportation of explosives and other dangerous articles and, more specifically, shall include and be limited to the following:

(1) Roman Candles, total pyrotechnic composition not to exceed twenty grams each in weight. (10 ball);

(2) Sky Rockets, with sticks, total pyrotechnic composition not to exceed twenty grams each in weight (6 oz.). The rocket sticks must be securely fastened to the casing;

(3) Helicopter Type Rockets, total pyrotechnic composition not to exceed twenty grams each in weight;

(4) Cylindrical Fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed  $\frac{3}{4}$  inch;

(5) Cone Fountains, total pyrotechnic composition not to exceed fifty grams each in weight;

(6) Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over  $\frac{1}{2}$  inch;

(7) Illuminating Torches and Colored Fire in any Form, total pyrotechnic composition not to exceed one hundred grams each in weight;

(8) Sparklers and Dipped Sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five grams;

(9) Mines and Shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight;

(10) Firecrackers and Salutes, with casings, the external dimensions of which do not exceed one and one-half inches in length or one quarter inch in diameter, to-

tal pyrotechnic composition not to exceed two grains each in weight;

(11) Whistles without Report, total pyrotechnic composition not to exceed forty grams each in weight.

(12) Railway fuses, other fireworks used by railroads or other transportation agencies for signal purposes or illumination, truck flares, hand ship distress signals and illuminating torches. Total pyrotechnic composition of illuminating torches not to exceed one hundred grams each in weight;

(13) Items composed of combination of two or more articles or devices of the above enumerated approved items.

#### Retail Sales Prohibited; Exceptions

Sec. 3. Be it further enacted, that no permissible articles of ICC Class C Common Fireworks enumerated in Section 2 shall be sold at retail, offered for sale at retail, or possessed for retail sale within the state, or used, in the State of Texas, unless same shall be properly identified to conform to the nomenclature of Section 2 hereof and unless it is certified as "ICC Class C Common Fireworks" on all shipping cases and by imprinting on the article or retail container, "ICC Class C Common Fireworks," with the exception of whistles without report, such imprint to be of sufficient size and placement as to be readily recognized by law enforcement authorities and the general public. Each manufacturer shall submit samples of all items to the State Fire Marshal for approval.

#### Exceptions From Act

Sec. 4. Be it further enacted, that there shall not be affected by this Act the following:

Toy pistols, toy canes, toy guns or similar devices in which paper caps containing twenty-five one-hundredths ( $\frac{25}{100}$ ths) grains or less of explosive compounds are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and toy paper pistol caps which contain less than twenty-five one-hundredths ( $\frac{25}{100}$ ths) grains of explosive compounds, the sale and use of which shall be permitted at all times.

#### License Fees

Sec. 5. A. A license fee of \$500.00 per year, due and payable on or before February 1st of each and every year beginning February 1, 1958, to the State Fire Marshal subject to the provisions of Section 12 of this Act, will be charged for the permit to manufacture, possess and sell fireworks. The manufacturer may manufacture, possess and sell items other than those enumerated in Section 2, but for sale and delivery only to states where other types of fireworks are legal but may not be sold or used in the State of Texas.

The same license fee will apply to and shall be paid by any and all out-of-state manufactur-

ers offering goods for sale in the State of Texas, as a condition to their sale in Texas.

B. A similar license fee of \$750.00 annually, due and payable on February 1st of each and every year, as provided in Section 5A above, will be charged all distributors who possess and sell the fireworks enumerated in Section 2.

The license fee provided herein shall be due and payable by all out-of-state distributors offering goods for sale within the State of Texas.

C. A license fee, due and payable as provided in Section 5A above, of \$500.00 per year, will be charged all jobbers who possess and sell the fireworks enumerated in Section 2.

The license fee provided herein shall apply to and be payable by out-of-state jobbers as a condition for selling within the State of Texas.

D. An annual license fee of Two Dollars (\$2.00) will be charged all retailers who possess and sell fireworks enumerated in Section 2, for which an annual retailer's license shall be issued effective until midnight of the following 31st day of January. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the 24th day of June and after the 4th day of July, or the 15th day of December of each year and after midnight of the 1st day of January of the following year.

E. An annual license fee, due and payable as provided in Section 5A above, of \$100.00, shall be due and payable by each importer who possesses and sells the fireworks enumerated in Section 2 above to any persons, firms, corporation or association within the State of Texas.

F. An annual license fee of \$10.00, due and payable as provided in Section 5D above, shall be due and payable by all salesmen who take orders for the sale of fireworks enumerated in Section 2 above and all salesmen are prohibited from taking orders from any firm, individual, corporation, association or partnership not licensed and each order for the sale of fireworks taken must reflect the license number of the purchaser. Furthermore, salesmen are prohibited from possessing any fireworks described in Section 2.

G. The license fees provided above shall be due and payable by each retailer annually and for each separate place of business maintained.

H. A license fee of \$5.00 for each public display shall be paid at the time of obtaining the permit, as hereafter provided, being payable to and in the manner provided and prescribed in Section 5A.

I. No person, firm, corporation or association shall deliver fireworks for resale to any individual, firm, corporation or association unless consignee produces a license or evidence that consignee holds such a license.

J. No distributor, jobber or retailer shall purchase fireworks from a factory, distributor, jobber, manufacturer or salesman without first requiring proof that the license required of

each herein has been obtained. No license provided for hereinabove shall be transferable nor shall a jobber or salesman be permitted to operate under a license granted to a distributor.

K. For the violation of any of the provisions of this Act, the license granted shall be revoked by order of the State Fire Marshal evidenced by a written notice of revocation furnished directly to the licensee and a copy thereof filed in the county or counties in which the licensee does business. Said notice of revocation shall set out the grounds for revocation and any licensee aggrieved thereby may, within ten (10) days from receipt of said notice, appeal from the decision of revocation to the District Court of Travis County, Texas, in which case the trial to determine the justification for said revocation shall be a trial de novo.

#### Licenses not Issued, When

Sec. 6. No license, as provided in Section 5, shall be issued for either, a manufacturer, a distributor, a jobber or a retailer unless the place of manufacture, or in case of a distributor, a jobber or a retailer, the place of storage of said fireworks, shall meet the requirements and specifications recommended from time to time by the State Fire Marshal.

#### Storing, Locating, or Display of Fireworks; Safety Measures

Sec. 7. Be it further enacted, the placing, storing, locating, or displaying of fireworks in any window where the sun may shine through glass on the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes within ten (10) feet of where the fireworks are offered for sale, is hereby declared unlawful and prohibited. Fireworks offered for retail sale must be protected from direct contact with the public at all times. Fireworks shall not be sold at retail or displayed to the public within any building or portion thereof or any vehicle which allows for entry any persons other than employees within such building or vehicle unless such fireworks are kept where they cannot be reached or handled by such persons. At all places where fireworks are stored or sold, there must be posted signs with the words "Fireworks—No Smoking" in letters not less than four (4) inches high. No fireworks are to be sold at retail at any location where paints, oils, or varnishes are kept for use or sale, unless such paints, oils and varnishes are kept in the original unbroken containers, nor where resin, turpentine, gasoline, or other inflammable substance which may generate inflammable vapor is used, stored, or sold, or where the licensing authority or any police, fire or regulatory body having direct supervision over the establishment shall determine that any condition exists which makes the sale of fireworks at such location unusually hazardous.

#### Sale to Children Under Ten Years of Age, Intoxicated or Irresponsible Persons; Throwing From or Into Motor Vehicle

Sec. 8. Be it further enacted, that it shall be unlawful to offer for retail sale or to sell

any fireworks to children under the age of ten (10) years or to any intoxicated or irresponsible person. It shall be unlawful to explode or ignite fireworks within six hundred (600) feet of any church, hospital, asylum, public school, or within one hundred (100) feet of where fireworks are stored, sold, or offered for sale. No person shall ignite or discharge any permissible articles of fireworks within or throw the same from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at such a motor vehicle.

#### Manufacturing, Possessing or Selling; Permit

Sec. 9. Be it further enacted, that no person, firm, corporation or association, without securing a permit from the State Fire Marshal, shall manufacture, possess or sell any dangerous fireworks for any use or purpose, including agricultural purposes or wild life control. Before any dangerous fireworks may be manufactured, possessed, sold or used, a permit therefor specifying the uses to be made thereof must be secured from the State Fire Marshal. Any permittee, whether governmental agency or commercial manufacturer, which distributes or sells at wholesale or retail agricultural or wild life fireworks shall require good and sufficient proof of the lawful intended use of such fireworks by the purchaser. The purchaser shall be required to exhibit the permit obtained from the State Fire Marshal as a condition to such purchase; a true copy of such permit and records specifying the uses to be made shall be given to the purchaser and only thereafter shall the purchaser be permitted to use the fireworks in the manner designated in the permit. Each such permit shall be good only for the specific purposes stated therein and for the time designated therein and at the end thereof shall be surrendered to the State Fire Marshal. The State Fire Marshal shall be paid \$1.00 for each such permit.

#### Class A Fireworks; Display, Etc.; Application for Permit; Surety Bond

Sec. 10. Be it further enacted, that "Class A Fireworks," as used in this part, shall include the following:

Colored bomb shells over 15 inches in circumference or consisting of more than one break;

Detonating shells, also known as aerial bombs, over nine inches in circumference or consisting of more than one break;

Ground bombardments, also known as detonating reports, of all sizes which explode on the ground;

Such other fireworks which may be designated for such classification by the State Fire Marshal.

Any adult person or any firm, copartnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the chief of the fire department or the chief fire prevention

officer of the city or county in which the display is to be held, or to the State Fire Marshal, or to such authorized deputy as he may designate for such purpose if there be no chief of the fire department or chief fire prevention officer in the area, at least 24 hours in advance of the date of the proposed display.

It shall be the duty of the officer to whom the application for a permit is made to make an investigation as to whether such a display as proposed shall be of such a character and so located that it may be hazardous to property or dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe.

The applicant for such display permit shall at the time of application furnish proof that he carries compensation insurance for his employees as provided by the laws of this state, and he shall file with the officer to whom the application is made, a bond issued by an authorized surety company to be approved by such officer, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant, or his or its agents, servants, employees, or subcontractors in the presentation thereof, or a certificate evidencing the carrying of appropriate public liability insurance issued by an insurance carrier authorized to transact business in this state for the benefit of the person named therein as assured, as evidence of ability to respond in damages in at least such amount, said policies to be similarly approved. If the permit is granted, the sale, possession, and use of fireworks for public display is lawful for that purpose only. No permit granted is transferable.

In the case of an applicant for a permit to display Class A fireworks, or a combination of Class A and Class B fireworks, the amount of such a surety bond shall be not less than Ten Thousand Dollars (\$10,000.00), and the amount of such insurance shall be not less than Twenty Thousand Dollars (\$20,000.00).

In the case of an application for a permit to display Class B fireworks exclusively, the amount of the surety bond shall be not less than One Thousand Dollars (\$1,000.00), and the amount of the insurance shall be not less than Five Thousand Dollars (\$5,000.00). Provided, that in lieu of filing a surety bond, an applicant for such a Class B permit may file a bond in the sum of at least One Thousand Dollars (\$1,000.00) with at least two good and sufficient sureties, subject to like conditions and to the approval of the officer issuing the permit.

Every public display of fireworks which includes in whole or in part "Class A Fireworks" shall be handled or supervised by a competent and experienced pyrotechnic operator approved by the chief of the fire department or the chief fire prevention officer of the city or county in

which the display is to be held, or by the State Fire Marshal or his authorized deputy therefor, if there be no chief of the fire department or chief fire prevention officer in the area.

Public display of "Class B Fireworks" may be supervised or handled by any competent adult person approved by the officer issuing the permit.

The State Fire Marshal shall adopt reasonable rules and regulations not inconsistent with the provisions of this part, for the granting of permits for, and the presentation of, public displays of fireworks.

All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property.

Notwithstanding the provisions of this part, any adult person, or any firm, corporation, or copartnership may secure a general license for the public display of fireworks within the State of Texas, subject to the provisions of this part relative to the securing of local permits for displaying of fireworks in any city or county, excepting that in lieu of filing such bonds or certificate of public liability insurance as hereinabove provided in this part, a surety bond similarly conditioned in the amount of Twenty-five Thousand Dollars (\$25,000.00) or a certificate evidencing public liability insurance in a like amount shall be filed with the State Fire Marshal, who shall have the authority to issue such licenses, subject to such reasonable rules and regulations, not inconsistent herewith, which he may adopt. A certificate evidencing such general license, when so obtained, shall be filed with the legislative body or officer granting a permit for the display of fireworks prior to the issuance thereof.

No permit shall be granted for the discharge of dangerous fireworks except in connection with public display of fireworks.

No person shall transport, convey or deliver any dangerous fireworks except for permittees making delivery to any other permittees, or to locations of public displays of fireworks authorized hereunder or to distributors outside of this state.

For purposes of license the sale and/or possession of "Class A" and "Class B" fireworks only, as described herein, shall require a Distributor's permit.

#### Violations as Misdemeanors; Punishment

Sec. 11. Be it further enacted, that any individual, firm, partnership, or corporation that violates any provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than one (1) year, or both, in the discretion of the court or jury.

#### License Fees; Disposition of Proceeds

Sec. 12. Be it further enacted, that all monies derived from the license fees provided in Section 5 of this Act shall be paid into the

State Treasury by the State Fire Marshal for safe keeping and shall by the State Treasurer be placed in a separate fund to be made available in such amounts as may be appropriated by the Legislature for the use of the State Fire Marshal in the administration of this Act and upon requisition by the State Fire Marshal. All such moneys so paid into the State Treasury and thus appropriated may be used by the State Fire Marshal for salaries and expenses of all persons employed for the administration and enforcement of this Act including all necessary travel expenses of the State Fire Marshal, or any assistant or appointee, and the Attorney General or persons authorized to act for either, when performing duties hereunder.

On January 1st of each year the unused portion of said funds in said special account for the past fiscal year shall be paid over and become a part of the general revenue fund.

#### Partial Invalidity

Sec. 13. Be it further enacted, if any portion of this Act be held unconstitutional, such holding shall not invalidate the remainder thereof.

#### Repealer

Sec. 14. Be it further enacted, that any Acts, laws or parts of laws in conflict herewith are hereby repealed to the extent of the conflict. However, this Act shall not repeal or affect any town, city or municipal ordinance which prohibits the sale and use of fireworks within the town, city or municipal boundaries which is in effect before the effective date of this Act, or that may be enacted after the effective date of this Act. Provided, however, that nothing herein shall be construed to limit or restrict the powers of cities, towns or villages as defined and delegated by Title 28, Revised Civil Statutes of Texas, to enact ordinances prohibiting or imposing further regulations on fireworks; and provided, however, that any ordinance or ordinances heretofore enacted by any city under the authority of the above mentioned Title shall remain in full force and effect until thereafter amended by such city.

#### Effective Date

Sec. 15. Be it further enacted, that this Act shall be and become effective on February 1st next from and after the passage of this Act, and any and all fireworks other than those defined in Section 2 above in the possession of any manufacturer, distributor, jobber or retailer for use in the State of Texas from and after the effective date of this Act shall be considered as a violation hereof and such persons, firms, corporations or associations shall be subject to the penalties herein provided.

[Acts 1957, 55th Leg., p. 1446, ch. 498, eff. Feb. 1, 1958; Acts 1963, 58th Leg., p. 1103, ch. 429, § 1, eff. Jan. 1, 1964.]

### Art. 9206. Water Safety Act

#### Declaration of Policy

Sec. 1. This Act shall be referred to as the "Water Safety Act." It is the duty of this

state to promote recreational water safety for persons and property in and connected with the use of all recreational water facilities within the state, to promote safety in the operation and equipment of facilities, and to promote uniformity of laws related thereto.

#### Severability

Sec. 2. If any Section, Subsection, or part of this Act shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions thereof, it being the express intention of the legislature to enact such Act without respect to such Section, Subsection, or a part so held to be invalid or unconstitutional.

#### Definitions

Sec. 2a. As used in this Act, unless the context clearly requires a different meaning:

(1) "Boat" means a vessel not more than sixty-five feet in length measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(2) "Vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as transportation on water.

(3) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

(4) "Owner" means the person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such possession.

(5) "Waters of this state" means any public waters within the territorial limits of this state; provided, however, privately-owned waters shall be excluded from the provisions of this Act.

(6) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(7) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(8) "Department" means the Texas Parks and Wildlife Department.

(9) "Dealer" means a person, firm, or corporation engaged in the business of selling motorboats.

(10) "Boat Livery" means a business establishment engaged in renting or hiring out motorboats for profit.

(11) "Undocumented motorboat" means any vessel which is not required to have, and does not have, a valid marine document issued by the Bureau of Customs of the United States government, or federal agency successor thereto.

(12) The certificate of number, or facsimile thereof, required by this Act shall be carried on board the vessel at all times.

(13) "Reasonable time" means fifteen (15) days.

Administration and Enforcement of Act; Transfer

Sec. 2b. All powers, duties, and authority originally vested in the Texas Highway Department in connection with administration and enforcement of this Act are transferred to the Texas Parks and Wildlife Department.

Operation of Unnumbered Motorboats

Sec. 3. Every undocumented motorboat on the waters of this state shall be numbered, except as provided by exemptions in this Act. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered as required by this Act which numbering system shall be in accord with the Federal Boating Act of 1958<sup>1</sup> and subsequent Federal legislation thereto, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate is properly displayed on each side of the bow of such motorboat.

<sup>1</sup> 46 U.S.C.A. § 527 et seq.

Identification Number

Sec. 4. (a) The owner of each motorboat requiring numbering by this state shall file an application for number with the department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee for which is hereinafter provided. Upon receipt of the application in approved form, the department shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the motorboat or vessel near the bow thereof the identification number, and a validation decal, in such manner as may be prescribed by the department. The number shall read from left to right and shall be of block characters of good proportion of not less than three (3) inches in height. The numbers shall be of a color which will contrast the hull material of the vessel and so maintained as to be clearly visible and legible. The certificate of number shall be pocket size. The form of certificate of number, application form, and manner of renewal shall be prescribed by the department; provided, however, that the certificate of number does not have to physically be on the person of the operator, if prior to trial operator can produce for examination a valid certificate of number. Fees for newly purchased watercraft or other boats not previously operated within this state shall pay the full registration fee.

(b) The numbering pattern to be used shall be divided into parts. The first part shall consist of the Prefix "TX" followed by a combination of exactly four (4) numerals and further followed by a suffix of two (2) letters. The group of numerals appearing between the let-

ters shall be separated from those letters by hyphens or equivalent spaces. All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other boat owners and livery operators.

The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

(c) The owner of any vessel or motorboat for which a current certificate of number has been awarded pursuant to any Federal law or a federally approved numbering system of another state shall, if such motorboat, or vessel is operated on the waters of this state in excess of ninety (90) days, make application for a certificate of number in the manner prescribed in this Act for a resident of this state.

(d) The department may award any certificate of number directly or may authorize any person to act as agent for awarding of certificates. In the event that a person accepts authorization he shall execute a faithful performance bond of not less than One Thousand Dollars (\$1,000) in favor of the State of Texas and may be assigned a block or blocks of numbers and certificates which upon award, in conformity with this Act and with any rules and regulations of the department, shall be valid as if awarded directly by the department. Such agent shall be entitled to a fee for his services not to exceed ten percent (10%) of the fee for each certificate.

(e) The owner shall furnish the department notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state or of the destruction or abandonment of such motorboat, within a reasonable time thereof. In all such cases, the notice shall be accompanied by a surrender of the certificate of number. When the surrender of the certificate is by reason of the motorboat being destroyed or abandoned, the department shall cancel the certificate and enter such fact in the records. The purchaser of a motorboat shall within a reasonable time after acquiring same present evidence of ownership thereof and make application to the department for transfer to him of the certificate of number issued to such motorboat, giving his name, address, and number of the motorboat and shall at the same time pay to the department a fee of One Dollar (\$1). Upon receipt of the application and fee the department shall transfer the certificate of number issued for such motorboat to the new owner. Unless such application is made and fee paid within a reasonable time, such motorboat shall be deemed to be without certificate of number, and it shall be unlawful for any person to operate such motorboat until the certificate is issued.

(f) All ownership records of the department made or kept pursuant to this Act shall be public records. Copies of all rules and regulations pursuant to this Act shall be furnished without cost with each certificate of number issued.

(g) Every certificate of number awarded pursuant to this Act shall continue in full force and effect for a period of two (2) years unless sooner terminated or discontinued in accordance with the provisions of this Act.

(h) Any holder of a certificate of number shall notify the department within a reasonable time if his address no longer conforms to the address appearing on the certificate, and shall, as a part of the notification, include his new address. The department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the department.

(i) In the event that any certificate of number becomes lost, mutilated or illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate upon application to the department and the payment of a fee of One Dollar (\$1).

(j) It shall be unlawful for any person to paint, attach, or otherwise display on either side of the bow of any motorboat any number other than the number awarded to said motorboat or granted reciprocity pursuant to this Act.

(k) It shall be unlawful for any person to deface or alter the certificate of number or number assigned and appearing on the bow of any boat.

(l) An application for the renewal of certificate of number shall be prepared by the department and mailed to each vessel owner within a period consisting of the last ninety (90) days before the expiration date on the certificate of number and the same number will be issued upon renewal. Any application not so received shall be treated in the same manner as an original application.

#### Ownership

Sec. 5. (a) A certified statement on the application for number shall be the minimum requirement for proof of ownership.

(b) Liens: Liens of all kinds, including reservations or transfers of title to secure debts, or claims, will be disregarded in determining ownership of a vessel.

A lien holder who acquires possession and title by virtue of default in the terms of the lien instrument, or any person who acquires ownership through such action as a lien holder, may apply for a number and shall attach to such application a notarized affidavit of repossession.

(c) Transfers by Operation of Law: Any person who acquires ownership of a vessel by inheritance, devise, or bequest may apply for a certificate of number by attaching a notarized heirship affidavit to his application along with the prescribed fee.

Any person who acquires ownership of a vessel by bankruptcy proceedings, through receivership or by any other involuntary divestiture of ownership, may apply for a certificate of number by attaching a copy of the court order, authorizing such action, to his application together with the prescribed fee.

(d) Cancellation of Certificate and Voiding of Number: A certificate of number may be cancelled and the identification number voided by the Department even though such action occurs before the expiration date on the certificate and such certificate is not surrendered to this Department. Certain causes for cancellation of certificates and voiding of numbers are:

- (1) Surrender of certificate for cancellation.
- (2) Issuance of new number for the same boat.
- (3) Issuance of a marine document by the Bureau of Customs for the same vessel.
- (4) False or fraudulent certification in an application for number.
- (5) Failure to pay the prescribed fee.

#### Manufacturer's or Builder's Serial Number

Sec. 6. (a) All new boats manufactured for sale in Texas after the effective date of this Act must carry a manufacturer's serial number clearly imprinted on the structure of the boat or displayed on a plate attached to the boat in a permanent manner.

(b) The owner of any vessel not required to carry a manufacturer's serial number may file an application for a serial number with the Department on forms approved by it. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of One Dollar (\$1). Upon receipt of the application in approved form, the Department shall enter the same upon the records of its office and issue to the applicant a serial number.

(c) No person shall wilfully destroy, remove, alter, cover, or deface the manufacturer's serial number, or plate bearing such serial number, or the serial number issued by the Department, on any boat. The possession of a boat with a serial number which has been altered, defaced, mutilated, or removed, is forbidden, and any person who obtains or comes into possession of such a boat is required to file with the Department a sworn statement describing the boat, proving legal ownership and, if known, the reason for the destruction, removal or defacement of the serial number.

#### Dealer's and Manufacturer's Number

Sec. 7. (a) Any dealer or manufacturer of motorboats of this state may, instead of securing a certificate of number for each motorboat he may wish to show or demonstrate or test on waters of this State, procure a dealer's and manufacturer's number which shall be attached to any motorboat which he sends temporarily on the waters. The two-year fee for a dealer's

and manufacturer's number shall be Twenty-five Dollars (\$25). Every dealer or manufacturer applying for such a number shall apply on forms provided by the Department. The application shall state that the applicant is a dealer or manufacturer within the meaning of this Act, and the facts stated on the application shall be sworn before an officer authorized to administer oaths. No such number shall be issued until the provisions of this Article have been satisfied.

(b) Each dealer or manufacturer holding a dealer's or manufacturer's number may issue a reasonable temporary facsimile of such number which may be used by any authorized person. A person purchasing a motorboat may use the dealer's number for a period not to exceed fifteen (15) days, prior to filing application for number. The form of the facsimile of the dealer's and manufacturer's number and the manner of display shall be prescribed by the Department.

#### Classification and Required Equipment

Sec. 8. (a) Motorboats subject to the provisions of this Act shall be divided into four (4) classes as follows:

Class A. Less than sixteen (16) feet in length.

Class 1. Sixteen (16) feet or over and less than twenty-six (26) feet in length.

Class 2. Twenty-six (26) feet or over and less than forty (40) feet in length.

Class 3. Forty (40) feet or over.

(b) Every vessel or motorboat when not at dock in all weathers from sunset to sunrise shall carry and exhibit at least one (1) bright light, lantern, or flashlight and the following lights when underway, and during such time no other lights which may be mistaken for those prescribed shall be exhibited:

(1) Every motorboat of classes A and 1 shall carry the following lights:

First: A bright white light aft to show all around the horizon.

Second: A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two (2) points abaft the beam on their respective sides.

(2) Every motorboat of classes 2 and 3 shall carry the following lights:

First: A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass, so fixed as to throw the light ten (10) points on each side of the vessel; namely from right ahead to two (2) points abaft the beam on either side.

Second: A bright white light aft to show all around the horizon and higher than the white light forward.

Third: On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient length so set as to prevent these lights from being seen across the bow.

(3) Motorboats of classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this Section. Motorboats of classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this Section shall be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by this Section shall be of such character as to be visible at a distance of at least one (1) mile. The word "visible" in this Section, when applied to lights, shall mean visible on dark nights with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this Section for a motorboat propelled by machinery only.

(c) Any motorboat may carry and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951 (65 Statute 406-420) as amended,<sup>1</sup> in lieu of the lights required by Subsection (b) of this Section.

(d) Every motorboat of classes 1, 2, or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of classes 2 or 3 shall be provided with an efficient bell.

(f) Every vessel shall carry at least one (1) life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Commandant of the Coast Guard for each person on board, so placed as to be readily accessible. Provided, that every motorboat carrying passengers for hire shall carry

so placed as to be readily accessible at least one (1) life preserver of the sort prescribed by the regulations of the Commandant of the Coast Guard for each person on board. Provided further, that the operator of every Class A and Class 1 motorboat, while underway, shall require every passenger 12 years of age or under at all times to wear a life preserver of the sort prescribed by the regulations of the Commandant of the Coast Guard; and that only a life preserver, not a life belt or ring buoy, will satisfy this requirement.

(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Commandant of the Coast Guard, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of Subsections (d), (e), and (g) of this Section shall not apply to motorboats while competing in any race conducted pursuant to this Act or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Commandant of the Coast Guard.

(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Commandant of the Coast Guard for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

(k) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this Section or modification thereof.

(l) It is hereby declared to be a policy of the State of Texas that all equipment rules and regulations enacted pursuant to the authority granted in this Act shall be uniform and not inconsistent with the equipment provisions of this Act.

(m) All motorboats will have exhaust water manifold and/or factory type muffler installed on engine when operating on the public waters of the State except racing craft engaged in a sanctioned race, sanctioned by the governing board of any public waters of this State, and shall have a written permit thereto issued by the governing board of the water body.

133 U.S.C.A. § 143 et seq.

#### Exemption From Numbering Provisions of This Act

Sec. 9. A motorboat shall not be required to be numbered under this Act if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to Federal law or federally approved numbering system of another state; provided, that such motorboat shall not have been within this State for a period in excess of ninety (90) consecutive days.

(2) A motorboat from a country other than the United States temporarily using the waters of this State.

(3) A motorboat whose owner is the United States, a state or subdivision thereof.

(4) A ship's lifeboat.

(5) A motorboat belonging to a class of motorboats which has been exempted from numbering by the department after said agency has found that the numbering of motorboats of such class will not materially aid in their identification; or if an agency of the Federal Government has a number system applicable to the class of motorboats to which the motorboat in question belongs, after the department has further found that the motorboat would also be exempt from the numbering if it were subject to the Federal law.

All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from the numbering provisions and from the safety equipment except insofar as they shall be required to have one (1) Coast Guard approved life-saving device for each person aboard and the prescribed lights for Class A vessels as described in Section 8 of this Act.

#### Boat Liveries

Sec. 10. (a) The owner or operator of a boat livery shall obtain a certificate of number for all vessels used to rent or let for hire that are capable of being used as a motorboat.

(b) The owner of a boat livery shall keep a record of: the name and address of the persons hiring any vessel which is designed or permitted by him to be operated as a motorboat; the certificate of number thereof; the time and date of departure and the expected time of return. The record shall be kept six (6) months.

(c) Boat liveries shall make application directly to the department on forms provided by the department. The application shall state the applicant livery is within the meaning of this Act, and the facts stated in the application shall be sworn before an officer authorized to administer oaths.

(d) It shall be unlawful for any livery owner or agent to rent or let for hire any vessel without having such vessel equipped with one

(1) Coast Guard approved life-saving device aboard for each person aboard the vessel.

**Prohibited Operation**

Sec. 11. It shall be unlawful for any person to operate any motorboat or vessel or manipulate any water-skis, aquaplane, or similar device in a wilfully or wantonly reckless or negligent manner so as to endanger the life, limb, or property of any person.

**Application of Act**

Sec. 12. The provisions of this Act shall apply to all the public waters of this state and to all watercraft navigated or moving thereon.

**Operating Boat at Excessive Speed Prohibited**

Sec. 13. No person shall operate any boat at a rate of speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring such boat to a stop within the assured clear distance ahead.

**Rules of the Road**

Sec. 14. The United States Coast Guard Inland Rules are hereby adopted and shall apply to all public waters of this state insofar as they are applicable.

**Operation so as to Create Hazardous Wake or Wash Prohibited**

Sec. 15. No person shall operate any motorboat so as to create a hazardous wake or wash.

**Operation in Circular Course Around Fisherman or Swimmer Prohibited**

Sec. 16. No person shall operate any motorboat in a circular course around any other boat any occupant of which is engaged in fishing or any person swimming. No swimmer or diver shall come within two hundred (200) yards of any sight-seeing or excursion boat except for maintenance purposes or unless within an enclosed area.

**Buoy, Beacon or Light Marker—Mooring to or Removing Prohibited**

Sec. 17. No person shall moor or attach any boat to any buoy, beacon, light marker, stake, flag or other aid to safe operation placed upon the public waters of this state by, or by others under the authority of, the United States or the State of Texas, or shall move, remove, displace, tamper with, damage or destroy the same. No person shall moor or attach any vessel to a state-owned boat launching ramp except in connection with the launching or retrieving of a boat from the water.

**Anchoring in Traveled Portion of River or Channel Prohibited**

Sec. 18. No person shall anchor any boat in the traveled portion of any river or channel so as to prevent, impede or interfere with the safe passage of any other boat through the same. No person shall anchor any vessel near any

state-owned boat ramp so as to prevent, impede or interfere with the use of such boat ramp.

**Restricted Area**

Sec. 19. No person shall operate a boat within a water area which has been clearly marked by buoys or some other distinguishing device as a bathing, fishing, swimming or otherwise restricted area by the department or by a political subdivision of the state; provided, that this Section shall not apply in case of an emergency, or to patrol or rescue craft.

**Local Regulations**

Sec. 20. (a) The governing body of any incorporated city or town, with respect to public waters within its corporate limits and all lakes owned by it, is hereby authorized by city ordinance to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas, and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act.

(b) The Commissioners Court of any county, with respect to public waters within the territorial limits of the county but outside the corporate limits of any incorporated city or town or political subdivision as contained in (c) below, except lakes owned by an incorporated city or town, is hereby authorized by order of the Commissioners Court entered upon its records to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas, and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act.

(c) The Governing Board of any political subdivision of the State created pursuant to the provisions of Section 59, Article XVI, of the Constitution of the State of Texas for the purpose of conserving and developing the public waters of this State, is, with respect to public waters impounded within lakes and reservoirs owned or operated by such political subdivision, authorized by resolution or other appropriate order to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas; and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act.

(d) A copy of any rule or regulation enacted pursuant to this Section shall be summarily filed with the department.

**Collisions, Accidents and Casualties**

Sec. 21. (a) It shall be the duty of the operator of a vessel involved in a collision, accident or casualty, so far as he can do without serious danger to his own vessel, crew and passengers, (if any), to render to other persons affected by the collision, accident or casualty such assistance as may be practicable and as

may be necessary in order to save them from or minimize any danger caused by the collision, accident or casualty and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(b) In the case of collision, accident or other casualty involving a vessel, the operator thereof, if the collision, accident or other casualty results in death or injury to a person or damage to property in excess of Fifty Dollars (\$50), shall file with the department a full description as said agency may, by regulation, require on or before thirty (30) days.

(c) These accident reports shall be confidential and shall not be admissible in court as evidence.

#### Water Skis and Aquaplanes

Sec. 22. (a) No person shall operate a vessel on any waters of this State for towing a person or persons on water skis, aquaplane or similar device unless the vessel is equipped with a rearview mirror of a size no less than four inches (4") in measurement from bottom to top or across from one side to the other. Such mirror shall be mounted firmly so as to give the boat operator a full and complete view beyond the rear of his boat at all times.

(b) No person shall operate a vessel on any waters of this State towing a person or persons on water skis, surfboard, or similar devices, nor shall any person engage in water skiing, surfboarding or similar activity at any time between the hours from one (1) hour after sunset to one (1) hour before sunrise.

(c) The provisions of subsections (a) and (b) of this Section shall not apply to motorboats or vessels used in water ski tournaments, competitions, exhibitions or trials therefore, provided that adequate lighting is provided.

(d) All motorboats having in tow or otherwise assisting in towing a person on water skis, aquaplane or similar contrivance, shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(e) Any person being towed on water skis, aquaplane or similar device by a vessel shall be considered an occupant of the vessel.

#### Transmittal of Information

Sec. 23. In accordance with any request duly made by an authorized official or agency of the United States any information compiled or otherwise available to the Department pursuant to Section 20(b) shall be transmitted to said official or agency of the United States.

#### Penalties

Sec. 24. (a) Every person who violates or fails to comply with any provision of this Act, shall be guilty of a misdemeanor.

(b) Every person convicted of a misdemeanor for which another penalty is not provided

shall be punished by a fine of not more than Two Hundred Dollars (\$200).

(c) Every person who violates or fails to comply with any city ordinance or any order of the Commissioners Court or order of any political subdivision of this State entered pursuant to this Act, shall be guilty of a misdemeanor. Every person convicted of a misdemeanor for which another penalty is not provided shall be punished by a fine of not more than Two Hundred Dollars (\$200).

(d) Any person who operates any vessel or manipulates any water skis, aquaplane or similar device, upon the waters of this State in a careless or imprudent manner while such person is intoxicated, or under the influence of intoxicating liquor, or while under the influence of any controlled substance as defined in the Texas Controlled Substances Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or by imprisonment of not to exceed six (6) months, or both.

(e) Any person who operates any vessel or manipulates any water skis, aquaplane or similar device, upon the waters of this State in willful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner so as to endanger or be likely to endanger a person or property shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

(f) Any person who violates or fails to comply with any regulation concerning the disposal of sewage from boats issued by the Water Quality Board under Section 21.097, Water Code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than Twenty Five Dollars (\$25) nor more than Two Hundred Dollars (\$200). A separate offense is committed each day a violation continues. This subsection shall be subject to the provisions of Sections 25 and 26 of this Act.

<sup>1</sup> Article 4476-15.

#### Enforcement

Sec. 25. (a) All peace officers and game wardens of this State and its political subdivisions shall have and are hereby given authority as enforcement officers for the purposes of this Act, and they and each of them shall have the power and authority to enforce the provisions of this Act by arrest and the taking into custody any person who may commit any act or offense prohibited by this Act or any person who may violate any provision of this Act. All boat operators underway and sighting a rotating blue beacon light will immediately reduce power and bring their boat to a no wake speed, and subsequent stop, until intentions of water safety boat are understood. Game Wardens are authorized to assist in the search and rescue for victims of water-oriented accidents. The use of rotating blue beacon lights is autho-

alized for Texas Parks and Wildlife and police water safety vessels and none other.

(b) Any such officer in order to enforce the provisions of this Act is hereby given the power and the authority to stop and to board any vessel subject to this Act and to inspect same for compliance with this Act. Any operator of a vessel required to hold a certificate of number aboard the vessel under the provisions of this Act, who fails or refuses, on demand of any officer, to show such officer the certificate of number, shall be deemed guilty of a violation of this Act. Officers so boarding any vessel shall first identify themselves by presenting proper credentials and it shall be unlawful for any person operating a boat on the waters of this State to refuse to obey the directions of such officer when such officer is acting pursuant to this Act. Provided, however, that the safety of the vessel shall always be the paramount consideration of any arresting officer.

(c) If any vessel or associated equipment is used in violation of this Act or regulation or standards issued thereunder so as to create in the judgment of a peace officer or game warden, an especially hazardous condition, he may direct the operator to return to mooring and that the vessel may not be subsequently used until the condition creating the violation is corrected.

(d) Any such officer arresting a person for a violation of this Act may deliver to such alleged violator a written notice to appear (within fifteen (15) days) from and after the date of such alleged violation, before the justice court having jurisdiction of the offense. Such person so arrested shall sign said written notice to appear and thereby promise to make his appearance in accordance with the requirements therein set forth, whereupon he may be released. It shall be unlawful for any person who has made such written promise to appear before the court in the county having jurisdiction to fail to appear, and such failure to appear at the time specified shall constitute a misdemeanor and warrant for his arrest may be issued.

(e) Venue for any alleged violation or offense under the terms and provisions of this Act shall be in the justice court or county court having jurisdiction where such alleged violation or offense shall have been committed. For any offense under this Act there shall be a presumption that such offense was committed in the justice precinct and county wherein the dam containing such body of water is located.

Fines and Penalties

Sec. 26. It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State receiving any fine or penalty imposed by any court for violation of this Act within ten (10) days after receipt of such fine or penalty, to remit same to deposit of Special Boat Fund, giving the docket number of the case, name of the person fined, and the

section of article of the law under which conviction was secured. In Justice Court cases the amount to be remitted to said Fund shall be eighty-five percent (85%) of such fines and penalties; in County Court cases the amount to be remitted to said Fund shall be eighty percent (80%) of such fines and penalties. All costs of the Court shall be retained by the Court having jurisdiction of the offense to be deposited as other fees in the proper county fund.

Fees

Sec. 27. (a) There is hereby levied a two-year fee in Section 4 of this Act as follows:

Class of Motorboats	Two-Year Fee
Class A	\$ 6.00 less than 16' in length
Class 1	9.00 16' or over and less than 26'
Class 2	12.00 26' or over and less than 40'
Class 3	15.00 40' and over

Such fee shall accompany the original and/or renewal application for certificate of number as required by this Act; provided that any boat less than sixteen (16) feet in length owned by a boat livery and used for rental purposes shall be required to pay a fee of Three Dollars (\$3) for the original and/or renewal application for certificate of number as required by this Act.

(b) Fees for newly purchased motorboats or other motorboats not previously operated within this State, which according to Section 4, must now be registered for the full term of registration.

(c) All fees shall be collected by the Department or through its duly authorized agents and deposited in the State Treasury to the credit of the Special Boat Fund. The Department shall use the Special Boat Fund for administering the provisions of this Act and purchasing all necessary forms and supplies including the reimbursement of the Department for any such material produced by its existing facilities or work performed by other divisions of said Department, and for acquiring land for recreational purposes, and any remaining funds shall be used to purchase, construct, or maintain boat ramps on or near public waters, as provided in Section 29 of this Act.

(d) Fees for currently registered motorboats may be less than the full fee specified in Section 27(a) if the expiration date established by the Department is prior to March 21, 1974, for the purpose of initiating a two (2) year staggered registration period.

Applicability of Fees to Commercial Fishing or Shrimping

Sec. 28. None of the registration fees of this Act shall apply to commercial fishing or shrimping boats having a boat license issued by the State of Texas as to shrimp or fish commercially in the salt waters of this State.

## Boat Ramps, Buoys and Markers

Sec. 29. (a) Boat Ramps. The Department is authorized to construct and maintain boat ramps and access roads by the use of existing or additional services or facilities of said Department. Upon the completion of such work, said Department is authorized to prepare and transmit vouchers to the Comptroller of Public Accounts payable to the Department or to any person, firm, or corporation for reimbursement for such work and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the Special Boat Fund to reimburse the Department or any person, firm, or corporation for the work performed.

(b) Buoys and Markers. In addition to the construction of boat ramps, the Department is authorized to provide for a standardized buoy marking program for the inland waters for the State of Texas. The Department is authorized to purchase and provide the controlling agency of such water bodies with buoys and markers from remaining funds in excess of the cost of administering this Act.

## Uniformity

Sec. 30. In the interest of uniformity it is hereby declared to be a basic policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the State.

## Acceptance of Federal Grants

Sec. 31. The Parks and Wildlife Department is authorized to apply to any appropriate agency or officers of the United States for participation in or the receipt of aid from any Federal programs as now provided by Federal law or as may hereafterwards be enacted which relates to water safety, including acquisition, maintenance and operating cost of facilities, purchase of equipment and supplies, personnel salaries and other Federally-approved reimbursable expenses, including but not limited to the cost of training personnel, public boat safety information and education, and general administrative and enforcement costs. The Parks and Wildlife Department is specifically authorized to enter into contracts or agreements with the United States for the purpose of complying with all necessary requirements for the receipt of funds made available

under any Federal Act later passed and as said Act shall hereafterwards be amended by Congress.

## Transfer of Records and Funds

Sec. 32. All records compiled by the Highway Department in connection with administration of the Texas Water Safety Act and all funds appropriated to the Highway Department from the Special Boat Fund or other source to pay expenses incurred in connection with Administration and enforcement of the Texas Water Safety Act are transferred to the Parks and Wildlife Department to be used as provided in that Act.

## Effective Date

Sec. 33. The certificate of number awarded by the Department to motorboats now registered shall be valid through March 31, 1972. Applications for renewals and original certificates of number may be awarded beginning January 1, 1972. The fees provided for biennial registration in Section 27 of this Act shall be valid beginning January 1, 1972.

[Acts 1959, 56th Leg., p. 369, ch. 179; Acts 1965, 59th Leg., p. 1540, ch. 676, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1564, ch. 628, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 517, ch. 180, §§ 1 to 5, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2355, ch. 719, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2929, ch. 971, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 40, ch. 27, § 2, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 1171, ch. 429, § 6.03(i), eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1687, ch. 612, § 2, eff. June 15, 1973.]

Section 6 of the amendatory act of 1969 provided: "All records compiled by the Highway Department in connection with administration of the Texas Water Safety Act and all funds appropriated to the Highway Department from the Special Boat Fund or other source to pay expenses incurred in connection with Administration and enforcement of the Texas Water Safety Act are transferred to the Parks and Wildlife Department to be used as provided in that Act."

## Art. 9206a. Operating Motor Boat While Intoxicated

Any person who operates a motor boat on any bay, lake, river, or other body of water in this State, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars.

[Acts 1949, 51st Leg., p. 822, ch. 442, § 1.]

## FINAL TITLE

### Section

1. Revised Civil Statutes.
2. Repealing Clause.
3. Not Ex Post Facto.
4. Validating Acts.
5. Public Debt.
6. School Funds.
7. Counties.
8. Courts.
9. Public and Other Lands.
10. Public Buildings, Etc.
11. Public Libraries.
12. Taxes.
13. Railroads.
14. Public Roads.
15. Pensions.
16. World War Veterans.
17. Monuments.
18. Appropriations.
19. Special Laws.
20. Effect of Repeal.
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22. Validity of Statutes.
23. Publication of Statutes.
- 23a. Printing and Publication.
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- 23h. Printing.
- 23i. Printing Contract.
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- 23k. Reprint.
- 23l. Appropriation.
- 23m. Emergency Clause.
24. Date Effective.
25. Reading Act.

Sec. 1. Be it enacted by the Legislature of the State of Texas:

That the following titles, chapters, subdivisions and articles shall hereafter constitute the Revised Civil Statutes of the State of Texas.

[See article 1 et seq. in volumes 3 to 5]

Be it further enacted:

**Sec. 2. Repealing Clause.**—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

**Sec. 3. Not Ex Post Facto.**—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be

changed, the same shall be conducted as near as may be in accordance with the Revised Statutes. No offense committed and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes, the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

**Sec. 4. Validating Acts.**—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or validating any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all validating or legalizing statutes whatsoever now in force in this State are hereby continued in force.

**Sec. 5. Public Debt.**—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

**Sec. 6. School Funds.**—That no law relating to the University or public school fund, or to the Agricultural and Mechanical College fund, or the investment of any such funds, or making any reservation in favor of the same, and no law affecting Federal aid for vocational education in this State, shall be affected by the repealing clause of this title, except where altered or amended by the Revised Statutes.

**Sec. 7. Counties.**—That no statute creating, adding to or organizing any county, or establishing any county seat, and no law affecting unorganized or new counties, shall be affected by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this Act.

**Sec. 8. Courts.**—That the laws now in force organizing the several district and other courts, or increasing, diminishing, restoring or defining the jurisdiction of said courts, and prescribing the times of holding said courts, except as herein otherwise provided, are continued in force.

**Sec. 9. Public and Other Lands.**—That all laws affecting the issuance of patents under valid land certificates; or fixing a time limit in which to redeem lands sold for taxes; or authorizing suits to contest forfeiture of sale for non-payment of interest on public lands, or affecting the reinstatement of rights after such forfeiture; or conferring a prior right to

purchase land surveyed by virtue of a private right, for which a patent cannot issue; or extending oil and gas permits on public lands; or extending the time for payment of principal due on public lands sold in accordance with law; or affecting the title to public and other lands; or authorizing the Land Commissioner, the Governor, or any authorized board, to sell or lease certain lands or water rights; or granting land to cities; or affecting land reservations, or setting apart portions of such reservations for the benefit of actual settlers, are continued in force.

**Sec. 10. Public Buildings, Etc.**—That no law providing for the construction or repairing of the public buildings of this State, or providing for the establishment of a central prison system, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

**Sec. 11. Public Libraries.**—That no law giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

**Sec. 12. Taxes.**—That all laws now in force which donate taxes to, or release the inhabitants from payment of taxes in any city or county or part of a county in this State on account of any calamity; and all laws now in force authorizing the levy of taxes by levee or drainage districts to redeem certificates of indebtedness issued on account of damage from flood, are continued in force.

**Sec. 13. Railroads.**—That all laws now in force authorizing railroad companies to sell or buy or lease other railroad companies, or to buy, sell or abandon tracks or right of way, or extending the time for constructing main or branch lines; and all laws now in force affecting the State Railroad, are continued in force.

**Sec. 14. Public Roads.**—That all laws providing for the maintenance of public roads in certain counties by a patrol system, are continued in force.

**Sec. 15. Pensions.**—That all laws granting pensions to soldiers and other persons entitled thereto by reason of service performed in connection with the Mexican War are continued in force.

**Sec. 16. World War Veterans.**—That all laws exempting persons who served in the late world war from payment of fees in public educational institutions in Texas are continued in force.

**Sec. 17. Monuments.**—That all laws authorizing the erection of monuments are continued in force.

**Sec. 18. Appropriations.**—That all laws making specific appropriations of public funds are continued in force.

**Sec. 19. Special Laws.**—That all laws, civil or criminal, of a local nature, operating in par-

ticular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the repealing clause of this title.

**Sec. 20. Effect of Repeal.**—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by said repealing clause.

**Sec. 21. New Laws.**—That nothing in this Act shall be construed to repeal or in anywise affect the validity of any law passed by this legislature in its regular session.

**Sec. 22. Validity of Statutes.**—That these Revised Statutes when adopted shall be construed to be an Act of the Legislature. No law herein shall be held to be void because its caption, when enacted, was in any way defective.

**Sec. 23. Publication of Statutes.**—That the Revised Statutes shall not be printed in the pamphlet laws of the thirty-ninth Legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

**Sec. 23a. Printing and Publication.**—That the Revised Civil Statutes, the Penal Code and Code of Criminal Procedure of the State of Texas adopted and established by the Thirty-ninth Legislature at its Regular Session, shall, as soon as practicable, be printed and published under the supervision of the Secretary of State and the Board of Control with the assistance of a supervisor as hereinafter provided, in the manner provided for in this Act.

**Sec. 23b. Title.**—That said Revised Civil Statutes shall be published in two volumes to be entitled "The Revised Civil Statutes of Texas, 1925"; and that said Penal Code and said Code of Criminal Procedure shall be published in one volume to be entitled "Texas Criminal Statutes, 1925". In the publication thereof the head indices and references, titles, chapters, and articles contained and numbered in the acts by which the same were adopted and established shall be retained and published therein, together with a full and accurate index to each of said Codes and said Revised Statutes.

**Sec. 23c. Omission of Repealed Articles.**—Where any article in said Revised Statutes or Codes has been expressly repealed by the Thirty-ninth Legislature said article shall be omitted from said volume, and in lieu thereof, there shall be inserted a statement to the effect that said article has been repealed, and the page of the session acts containing said repealing statute.

**Sec. 23d. Omission of Amended Articles.**—Where any article in said Revised Statutes or Codes shall have been amended and re-enacted by the Thirty-ninth Legislature, said article shall be omitted and the article as amended and re-enacted shall be inserted in lieu thereof, with notes or references showing the date of

the Statute by which said article was amended, and the page of the session acts in which said Statute appears.

**Sec. 23e. Retention of Modified Articles.**—When any article, chapter, or title of said Revised Statutes or Codes has been modified by an act of said Legislature, but the same is not amended and re-enacted, then said article, chapter, or title shall be retained in said volume, and the act modifying the same shall be inserted immediately after such article, chapter, or title, together with like notes or references, as hereinbefore provided.

**Sec. 23f. Indices.**—Full and accurate indices to said Codes and the Revised Statutes shall be attached to each of said Codes and to the Revised Statutes respectively. The supervisor to be appointed shall have authority to correct evident typographical errors and inaccuracies found in said Revised Statutes and Codes.

**Sec. 23g. Reviser.**—The Governor shall appoint a lawyer of experience and ability who shall prepare said volumes for publication as directed in this Act, under the direction of the Secretary of State, and who shall read and revise the proof of the said Statutes, Codes and indices, and other matters included in said volumes, and shall receive for his services the same compensation as was allowed the commissioners who revised the Codes and Statutes, to-wit, five hundred dollars per month, for the time he is actually engaged in the duties required of him, the same to be paid upon the certificate of the Comptroller out of the amount appropriated for printing the Revised Statutes and Codes, and said codifier is authorized to employ one assistant such assistant to be paid on the certificate of the Comptroller out of the same fund, an amount not exceeding one hundred and fifty dollars per month and the total to be expended under this section shall not exceed two thousand five hundred dollars.

**Sec. 23h. Printing.**—The Statutes and Codes shall be printed on the good quality of book paper, in size of page and style and type corresponding with the printed bill adopting the Revised Statutes of Texas of 1925. There shall be printed eight thousand copies of each of said volumes of said Civil and Criminal Codes. The binding shall be of the best style and workmanship and in law buckram of the best quality, and the title page of each volume shall recite and show that it is published by authority of the State of Texas, and each shall be authenticated by the certificate of the Secretary of State annexed thereto, as other laws when published are required to be certified; and said State Board of Control shall require said edition to be electrotyped and shall secure and preserve the plates as the property of the State, same to be delivered to the Secretary of State.

**Sec. 23i. Printing Contract.**—The Board of Control shall immediately after the passage of this Act advertise for thirty days in three daily newspapers in this State for sealed proposals

for printing, binding and electrotyping the laws as aforesaid, and shall on the day fixed in the advertisement, in the presence of such persons as desire to be present proceed to open the proposals and award the contract to the best and lowest bidder, which proposal shall state the price per volume at which the bidder proposes to electrotype, print, bind and furnish under the superintendence and direction of the said board the laws and electrotype plates, as herein provided, and no bid or proposal shall be considered that is not accompanied by a guarantee of two or more sufficient sureties that if the contract should be awarded to the bidder he will execute the necessary bond for the performance of the work in the manner and style provided in this Act; and the person or persons to whom such contract is awarded shall within ten days after receiving notice thereof, execute a bond to the State of Texas in the sum of such amount as may be fixed by the Board of Control, with two or more sufficient sureties, to be approved by the board, conditioned for the faithful performance of the work in the manner and style therein prescribed and according to the provisions of this Act, and for the delivery of said volumes and plates to the Secretary of State on or before the first day of September, 1925; said volumes may be received, for an earlier distribution, in numbers of a thousand at a time, as the work progresses; and the right shall be reserved by the board to reject any and all bids and proposals if in their judgment the terms proposed are not favorable to the State. Upon the delivery by the contractor of the volumes and plates aforesaid to the Secretary of State, executed according to the terms of the contract and accepted by the board, the amount due therefor shall be audited, allowed, and paid as provided by law in cases of other public printing, and the statutes in force in relation to public printing shall be applicable to the contract under this Act in all matters not herein otherwise provided.

**Sec. 23j. Copies for Officials.**—The Secretary of State shall furnish one copy of each volume to each member of the Legislature including the Lieutenant Governor and to each county judge in the State and shall in addition thereto furnish each county judge of the State a sufficient number of each of said volumes to supply each elective county and precinct officer, with one copy of each of said volumes and the Secretary of State shall furnish one copy of each volume to each of the judges of the Supreme Court, the Courts of Civil and Criminal Appeals, to each district judge, to each district attorney, and each executive at the seat of government and four copies to the librarian of the State Library. In forwarding said copies the Secretary of State shall regard only those officers who have secured their certificate of election as officers, where certificates are required, entitled to receive said copies. After the officials hereinbefore enumerated have been supplied, single copies may be sold by the Secretary of State for the same price which

the State pays the contracting printer, plus expense of handling and postage, such sales to be made to persons who desire them for their own use and the proceeds of such sales shall be paid the State Treasurer and the Secretary of State shall report such sales in his biennial report.

**Sec. 23k. Reprint.**—The Board of Control shall contract for the printing of eight thousand copies each of the Civil and Criminal Statutes and may from time to time, if the demand shall make it necessary, at the request of the Secretary of State, cause such additional volumes to be printed as may be required to supply such demand.

**Sec. 23l. Appropriation.**—Sixty thousand dollars, or so much of that sum as may be necessary, is hereby appropriated for the purpose of carrying into effect the provisions of this Act.

**Sec. 23m. Emergency Clause.**—The necessity for the publication of the Revised Statutes and the Penal Code and Code of Criminal Procedure of the State of Texas in as complete a

form as possible, and their early distribution among the people, creates an imperative public necessity and emergency that the rule requiring bills to be read on three several days be suspended, and this Act take effect and be in force from and after its passage, and it is so enacted.

**Sec. 24. Date Effective.**—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and twenty-five.

**Sec. 25. Reading Act.**—The importance and great length of this Act, the fact that it is impossible to read the same on any one day or on any three consecutive days, the length of time required for its publication, and the near approach of the end of the present session of the Legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house be and the same is hereby suspended.

[Acts 1925, S.B. 84; Acts 1925, 39th Leg., p. 282, ch. 104, §§ 1 to 13.]

## RECORD OF ENACTMENT

The enrolled bill (Revised Civil Statutes 1925) on file in the office of the Secretary of State shows that the foregoing act passed the Senate finally January 27, 1925 (no vote given).

Passed the House March 18th, 1925 (no vote given).

Approved by the Governor April 1, 1925.

## INDEXES

Separate indexes are included in Volumes 1 and 2 for the Constitution and Statutes and Codes therein, as listed below. The Revised Civil Statutes, other than the few Titles included in Volume 2, are covered in the Topical Index beginning on the opposite page.

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